

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. OF 2013

IN

WRIT PETITION (CIVIL) NO.494 OF 2012

IN THE MATTER OF:

Justice k.S. Puttaswamy (Retd) & Anr.

... Petitioners

Versus

Union of India & Ors.

... Respondents

**AN APPLICATION FOR INTERVENTION FILED ON BEHALF OF
BEGHAR FOUNDATION AND INDU PRAKASH SINGH**

PAPER BOOK

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ADVOCATE FOR APPLICANTS: NIKHIL NAYYAR

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An application for intervention

Justice K.S. Puttaswamy (Retd.) &Anr. ... Petitioners

Versus

Union of India & Ors. ... Respondents

AND IN THE MATTER OF

1. BEGHAR FOUNDATION
Through its Secretary,
Sh. Ashok Pandey
C-1/13, 1st Floor
Vashisht Park,
New Delhi-110046

2. INDU PRAKASH SINGH
MANAVs, 18 A,
MIG Flats, Sheikh Sarai, Phase-I,
New Delhi-110017

... Applicants

TO

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION

JUSTICES OF THE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE APPLICANTS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The present writ petition has been filed by the Petitioners above named challenging the validity of the 'Aadhaar' scheme of the Unique Identification Authority of India (hereinafter referred to as the "UIDAI"). The said writ petition is pending disposal before this Hon'ble Court.

2. That the Applicant No.1/Intervener No.1 is a foundation constituted by homeless people, who by their collective efforts endeavour to make homeless citizens within Delhi self-sufficient. Since its inception in the year 2001, the Applicant No.1 has invested its efforts in providing sustainable means of livelihood for the homeless and has also strived to record their existence by facilitating identity proofs such as a ration card. In the past few years, the Applicant No.1 has been diligently committed to the cause of recognition of the voting rights of homeless citizens, their proper employment and providing them with affordable housing. Applicant No.1 was also actively involved in procuring the Aadhaar cards for the benefit of the homeless. However, it is only then that it became increasingly aware of the many practical flaws of the UID Scheme and its effective exclusion of the poorer sections of the society.

3. The Applicant No.2/Intervener No.2 is a human rights defender and a feminist who enlisted himself to the cause of women's rights from the year 1982. He is an author of four books on Women's issues: Women's Oppression, Men Responsible, Women, Law and Social Change in India (London & New Delhi), Indian Women: The Captured Beings, Indian Women: The Power Trapped. He is also actively involved with the functioning of SHELTER- Sustaining Housing, Health, Education & Livelihoods through Empowerment and Rights Intervention, City Makers Programme, since December 2009. He has been recognized for many of his contributions, as he has been bestowed with the CNN- IBN (IBN 18 & Network 18) "Citizen Journalist Award" on February 15, 2010. He was also chosen as the "Person of the Year, 2003" by the First City magazine of Delhi. In fact, the Applicant No.2 had actively been involved with Applicant No.1 in the sincere efforts of ensuring that the homeless in Delhi got themselves enrolled for the UID Number. However, due to inherent flaws evident on the very face of the UID Scheme, it was clear that aiding the implementation of the scheme would in effect amount to abetting the violation of the fundamental rights of the homeless and the poor.

4. The Applicants had preferred a writ petition bearing W.P.(C) No. 4996/2013 titled as "Beghar Foundation & Anr. Vs Union of India & Ors." before the Hon'ble Delhi High Court challenging the constitutional validity of the Unique Identification Scheme (hereinafter referred to as the "UID Scheme") established *vide* Notification No-A-43011/02/2009-Admn.I dated January 28, 2009. On the basis of this notification the UIDAI, has been empowered to issue Unique Identification numbers or UID or "Aadhaar" numbers to every resident of India, by collecting demographic and biometric information that is uniquely personal to every individual. It is respectfully submitted that the said notification is without any statutory or legislative sanction and is in complete violation of the fundamental rights of the people of India.
5. The Applicants were constrained to file the abovementioned writ petition when the Government of NCT, Delhi insisted on UID or Aadhaar number as being the only acceptable proof of identity and making it mandatory through various notifications for availing critical services and utilities. Following are the instances where the Aadhaar number has been made mandatory by the Government of NCT for essential services and utilities within the State of Delhi:

(a) **Marriage Registration and Registration of other documents:** A notification dated December 20, 2012, required that the Aadhaar number of the applicants should be mandatorily mentioned in the prescribed application forms for registration of marriages under the Hindu Marriage Act, 1955, registration of marriages under Special Marriage Act, 1954, solemnisation of marriages and registration of various documents in the sub-registrar's office. A copy of the notification dated December 20, 2012 is annexed herewith as **ANNEXURE A-1. (Pages 30 to 34)**

(b) **The Revenue Department of Delhi:** The Revenue Department of the Government of NCT, notified that the UID number/Aadhaar is mandatory for procuring SC/ST certificate, income certificate, etc. A copy of the notification dated December 18, 2012 is annexed herewith as **ANNEXURE A-2. (Pages 35 to 37).**

(c) **LPG connections:** Government of NCT from January 1, 2013 decided to make Aadhaar number mandatory for transfer of subsidy amount into the bank account of a LPG gas cylinder subscriber of oil companies in 43 pilot districts within the state of Delhi. Reliance in this regard is

placed on the article dated January 13, 2013 titled as "Aadhaar must for subsidized LPG cylinder" and the Notification dated May 15, 2013 titled as "Petroleum Minister announces launch of Direct Benefit Transfer for LPG Scheme in 20 Districts" which is enclosed herewith and annexed as **ANNEXURE A-3 (Colly)**. (Pages 38 to 44)

6. The unreasonable mandatory condition and the hasty implementation of the UID Scheme without any legal authority or framework, has rendered the poor and marginalised, completely ineligible from availing the services and schemes offered by the State. Considering that the beneficiaries of the welfare schemes implemented by the State are typically people below the poverty line or marginally above it, these unreasonable restrictions have forced them to divulge personal data at grave risk, and for those who haven't been successful in procuring the Aadhaar number, they are completely excluded from benefits that they are otherwise entitled to. The mandatory nature of the UID Scheme is an absolute violation of Article 21 of the Indian Constitution, as it is not a "procedure established by law" and therefore deserves to be quashed. .

7. The writ petition was filed before the Hon'ble Delhi High Court on July 31, 2013 and was listed for the first time on August 7, 2013. On the said day the Hon'ble High Court directed the Respondents to file their counter affidavits within six weeks and rejoinder if necessary within 2 weeks. The matter was thereafter listed for November 6, 2013. A true typed copy of the writ petition bearing W.P.(C) No. 4996 of 2013 is annexed herewith as **ANNEXURE A-4. (Pages 45 to 91)**. A true typed copy of the order dated August 7, 2013 passed by the Hon'ble Delhi High Court in W.P. (C) No. 4996 of 2013 is annexed herewith as **ANNEXURE A-5. (Pages 92 to 93)**.
8. Thereafter, on September 23, 2013 in the instant writ petition i.e. W.P.(C) No. 494 of 2012 this Hon'ble Court was pleased to pass an interim order dispensing with the mandatory requirement of the Aadhaar Card and re-instating its voluntary nature. The relevant portion of order is as follows:

"In the meanwhile, no person should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant".

A true copy of the order dated September 23, 2013 passed by this Hon'ble Court in W.P.(C) No. 494 of 2012 is annexed herewith as **ANNEXURE A-6. (Pages 94 to 96).**

9. On the very same day this Hon'ble Court was also pleased to allow the Transfer Petitions with respect to W.P. No. 439 of 2012 titled as "S. Raju vs. Govt. of India and Ors." pending before the Madras High Court and PIL No. 10 of 2012 titled as "Vikram Krishna and Ors. vs. UIDAI and Ors." pending before the Bombay High Court. A true copy of the order dated September 23, 2013 in Transfer Petitions bearing TP (Civil) Nos. 47-48 of 2013 passed by this Hon'ble Court is annexed herewith as **ANNEXURE A-7. (Pages 97 to 98)**
10. On the next date of hearing i.e. November 6, 2013 the order of this Hon'ble Court dated September 23, 2013 was placed before the Hon'ble Delhi High Court. The Hon'ble High Court held that since this Hon'ble Court has already transferred to itself a case raising an identical issue, there was no reason to continue with the Petitioners' Public Interest Litigation. Thus, the Hon'ble Delhi High Court while disposing of the writ petition gave the Applicants herein the liberty to file an appropriate application before this Hon'ble Court. The relevant portion of the order is as follows:

"Learned counsel for the respondents have drawn the attention of this Court to the order of the Supreme Court dated 23rd September, 2013 passed in Transfer Petition (Civil) No. 47-48 of 2013. Since admittedly, the Supreme Court has transferred to itself a case raising an identical issue, we see no reason to continue with present public interest litigation.

Accordingly, the petition is disposed of. However, the petitioner is at liberty to file an appropriate application before the Supreme Court in accordance with law".

A true typed copy of the order dated November 6, 2013 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 4996 of 2013 is annexed herewith as **ANNEXURE A-8: (Pages 99 to 100)**.

11. Therefore in the light of the order of the Hon'ble Delhi High Court the Applicants are filing the instant Intervention Application before this Hon'ble Court:
12. It is respectfully submitted that most of the services made accessible upon subscribing to the UID Scheme are directly intended for the poorer sections of the society. The poor and marginalized residents of India are portrayed to be the prime target for the many welfare schemes sought to be implemented by the Respondents and other State Governments. In the event the poor and the marginalized

communities refuse to obtain the UID on account of the release of personal data, they would be deprived of essential services. Thus the Respondent's action of imposing a mandatory condition for availing benefits that are rightfully theirs, and leaving them without any option to exercise their right to not divulge any personal data or submit biometric information is a gross violation of their fundamental rights and abuse of the power of the State.

13. It is respectfully submitted that the only purpose of this Intervention Application is to supplement the submissions made by the Petitioners in the instant writ petition and to draw this Hon'ble Court's specific attention to the plight of the poorer sections of the society, who have been effectively excluded from the purview of services and benefits that they are otherwise entitled to receive, on account of the unreasonable and illegal implementation of the UID Scheme. The Applicants are in the unique position to represent these interests on account of its own experiences of dealing with the UID Scheme and first hand witnessing its practical flaws, unreasonableness, compromising security of the personal data collected and over all defectiveness.

14. That this Hon'ble court has already been pleased to allow the Transfer Petitions of matters pending before the Madras High Court and Bombay High Court and therefore it would be in the interest of justice to have the instant intervention application allowed as well.

15. That the Applicants submit the following submissions under for the consideration of this Hon'ble Court:

15.1 The UID/Aadhaar Scheme entails the collection of vital personal data for the issuance of UID number by the Respondents without any legislative authority/statutory sanction.

15.2 The personal data and biometric information collected, in the absence of any legislative sanction, or data protection laws in India for regulating its use and disclosure, is a direct infringement of the Right to Privacy of the people of India.

15.3 The Respondents are making the UID Number/Aadhaar as a mandatory requirement for access and entitlement to the various critical services and utilities provided by it, which is a clear violation of Article 21 of the Indian Constitution.

15.4 The International legal perspective being clearly against the collection of such personal data and biometric information as envisaged under the UID Scheme.

15.1 The UID/Aadhaar Scheme entails the collection of vital personal data for the issuance of UID number by the Respondents without any legislative authority/sanction.

(i) The UIDAI has been established pursuant to an executive notification as an "attached office" of the Planning Commission vide Notification No-A-43011/02/2009-Admn.I January 28, 2009. Therefore the UIDAI, is only an executive body, and it does not have the constitutional authority to encroach into matters that are exclusive to the Legislative ambit. Further the UID Scheme is without any legal sanction or statutory recognition pending the enactment of the National Identification Authority India Bill (hereinafter referred to as the "NIAI Bill"). Thus, the UIDAI, merely on the basis of an executive notification, has been illegally collecting personal identifying information from the residents.

(ii) The notification dated January 28, 2009 pursuant to which the UIDAI was established, reflects the untrammelled power that has been vested in the UIDAI

Authority in the absence of any specific guidelines which would be pertinent to identify the necessary metes and bounds within which the UIDAI would function. For an executive body to enter into the realm of fundamental rights, necessary statutory and legislative limits have to be prescribed, which are absent in the instant case. It has not only been given the responsibility to collect the data, but is also empowered to frame policy decisions pertaining to its use, which can only be responsibly decided by the Parliament. The wide powers devolved upon UIDAI is a classic example of excessive delegation, and when these powers directly interfere with fundamental rights such as right to privacy, right to life, etc. they deserve to be struck down as being ultra vires and unconstitutional.

15.2 The personal data and biometric information collected, in the absence of any legislative sanction, or data protection laws in India for regulating its use and disclosure, is a direct infringement of the Right to Privacy of the people of India.

- (i) There are absolutely no Data Protection Laws in existence in India to safeguard the personal data collected under the UID Scheme- The issuance of a UID number, without any data protection laws being in place

within India, and without the NIAI Bill being enacted, is likely to lead to instances of identity duplicity, fraud or unauthorized access to the personal data of residents for unlawful purposes. The NIAI Bill is the only proposed legislation that encapsulates within itself certain provisions that imposes criminal consequences, in case of misuse of personal data of any person. Without such a legal framework being in place, prior to collection of highly sensitive and personal data, that too by some private enrolling agencies, is bound to lead to heavy and dangerous compromises being made on the fundamental rights of Indian citizens.

- (ii) Involvement of Private Enrolment Agencies (EAs) for the collection of personal data under the UID Scheme: In a haste to ensure maximum enrolment to the UID Scheme, and in complete disregard of any security concerns, the Respondents have directed the enlistment of private enrolment agencies who are required to work in coordination with the appointed Registrars of UIDAI in every State for the collection of sensitive personal information. While directing the involvement of private parties, the Respondents have completely failed to ensure the establishment of any concrete security

guidelines that would prevent the exploitation of the personal data collected, to serve commercial interests.

On the contrary, the guidelines issues to these private enrolment agencies, are shockingly revealing of the lackadaisical approach of the UIDAI towards data security and privacy protection. Reliance in this regard is placed on the Report titled as "Empanelment of Enrolling Agencies for Undertaking Demographic and Biometric Data Collection for UID Enrolment" dated May 11, 2011 which is annexed herewith as **Annexure A-9**.

(Pages 101 to 151) The said report clearly evidences the cavalier attitude of the UIDAI with respect to the security and confidentiality of the personal data collected by it:

(a) It was specified that it is the responsibility of the EAs and not the Respondents to make sure that the data is kept secure and confidential.

Other than proposed audits, there are absolutely no guidelines prescribed by the Respondents to ensure the safety of the personal data collected by the EAs.

(b) There is no contract regulating the relationship between EAs and UIDAI. Therefore effectively

there is no direct control or liability that can be exercised by the UIDAI without statutory sanction to ensure compliance of any of its general guidelines by the EAs.

Another cause for concern is that the Respondents have made absolutely no efforts to examine the constitution of the private agencies coming forward to participate in the enrolment process. As a result of this there are many private agencies which have substantial foreign involvement, and thus collection of personal data of an Indian resident by them poses serious threats to national security.

(iii) The Biometric Data collected under the UID scheme is not infallible. The biometric details that are being collected under the UID Scheme along with personal data are as follows:

- 1) face recognition by collection of photographs,
- 2) ten fingerprints and,
- 3) Iris scans of each person.

The Standing Committee Report dated December 13, 2011 clearly expressed its serious concerns on issues relating to privacy and security of UID data, and the requirement of collection of iris images. It also noted that the enactment of a national data protection law is a condition precedent when personal data is being collected at such a large scale and being linked to databases. In the absence of such data protection legislation, it was observed that it would be difficult to deal with access and misuse of personal information, surveillance, profiling, linking and matching of databases and securing confidentiality of information. A true copy of the Standing Committee Report dated December 13, 2011 is enclosed hereto and marked as **ANNEXURE A-10** (Pages 152 to 200).

It is further respectfully submitted that the collection of Biometrics by the Respondents is a serious breach of the right to privacy and even has the potential to threaten the very sovereignty of this nation. Most importantly, the Standing Committee clearly highlighted that the UID scheme is ineffective in bringing all sections of the population under its ambit owing to two factors - (i) the

UIDAI's lack of statistical data and (ii) the population's large dependency on manual labour leading to the high estimated failure of biometrics (15%). It was also observed that the failure of biometrics further leads to high risk of impersonation by certain individuals at the time of enrolment for the issue of UID number. Reliance in this regard is also placed on the Report of 4G Identity Solutions, who is one of the enrolling agents of the UIDAI, titled as "De-duplication-The Complexity in the Unique ID context" that clearly highlights the following:

"Fingerprints are susceptible to noisy or bad data, such as inability of a scanner to read dirty fingerprints clearly. People above 60 years and young children below 12 years may have difficulty enrolling in a fingerprinting system, due to their faded prints or underdeveloped fingerprint ridges. It is estimated that approximately 5 percent of any population has unreadable fingerprints, either due to scars or aging or illegible prints. In the Indian environment, experience has shown that the failure to enroll is as high as 15% due to the prevalence of a huge population dependent on manual labor."

The report of 4G Identity Solutions is annexed herewith and marked as **ANNEXURE A-11. (Pages 201 to 215).**

Other valid concerns with respect to Biometric data are as follows:

- (a) An individual's biometrics can change in response to a number of factors including age, environment, stress, activity, and illness.
- (b) Since biometrics have differing levels of stability, the larger the population the higher is the possibility for error.
- (c) The accuracy of a biometric match also depends on the accuracy of the technology used. However, since many aspects of biometric technology can change including: calibration, sensors, and algorithms authentication based on biometric is wholly unreliable.
- (d) It is very much possible to spoof a fingerprint and fool a biometric reader, which may lead to unaccountable ramifications.

15.3 The Respondents are making the UID Number/Aadhaar as a mandatory requirement for access and entitlement to the various critical services and utilities provided by it, which is a clear violation of the right to life enshrined under Article 21 of the Indian Constitution:

(i) Right from the start the UIDAI has maintained that it would enrol only *willing residents* into a central database, i.e the Central Identities Data Repository (hereinafter referred to as 'the CIDR'), following their verification on the basis of demographic and biometric data. The Strategy Overview of the UID Scheme further assures that the scheme is absolutely voluntary and will involve a partnership between existing Government infrastructure and private agencies. Even according to the website of UIDAI, Aadhaar was never intended to be mandatory, nor was it intended to replace other IDs.

(ii) It is pertinent to note that even in the instant writ petition the Respondents have maintained that the scheme is "purely and totally voluntary" and primarily intended for the inclusion and benefit of the marginalised section of the society "who have no formal proof of identity vis-à-vis the State". Therefore, although the UID was conceptualized to be purely 'voluntary', in practice the Respondents have made the requirement of UID or Aadhaar number mandatory for availing several essential services. The mandatory requirement in turn has further resulted in non-consensual extraction of personal information. The fact that presently a resident has to forego a welfare benefit or

is otherwise subject to detriment due to his or her failure to secure a UID number, inspite of having other valid IDs to prove his/her identity is a gross violation of the Right to Life under Article 21 of the Indian Constitution.

15.4 The International legal perspective being clearly against the collection of such personal data and biometric information as envisaged under the UID Scheme.

Many countries the world over have realised the possible ramifications of requiring its citizens to submit their personal data and biometric information.

(i) In this regard, it is important to rely on the decision of the Philippines Supreme Court in the case titled "*Ople v/s Torres*". In the said case, which had a similar factual matrix as to the present Petition, the Apex Court of Philippines had quashed the Administrative Order No. 308 entitled as "Adoption of a National Computerized Identification Reference System" on the grounds of it being violative of the Right to Privacy. The Administrative order No. 308 aimed to provide the citizens and foreign residents of Philippines with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities. In order to

achieve this goal it was decided that a computerized system would be required to properly and efficiently identify persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations. Pursuant to this, the notification directed the generation of a Population Reference Number (PRN) generated by the National Statistics Office which would serve as the common reference number to establish a linkage among concerned agencies through the use of "Biometrics Technology" and "computer application designs". The Hon'ble Philippines Supreme Court ultimately held that Administrative order No. 308 had to be set aside since it lead to the usurpation of the power of Congress to legislate, and it allowed impermissible intrusion into the citizenry's protected zone of privacy. It was observed that:

"The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards, a private sector, which belongs to the individual, firmly distinguishing it from the public sector,

which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.”

A true copy of the decision of the Philippines Supreme Court in the case titled “*Ople v. Torres*” is enclosed hereto and marked as **ANNEXURE A-12 (Pages 216-253)**.

(ii) Further in the UK, the Identity Cards Act, 2006 which was promulgated to provide National Identity Cards, a personal identification document and European Union travel document, for all its citizens, which would be linked to a database known as the National Identity Register (NIR), was repealed in the year 2010. The Act specified fifty categories of information that the National Identity Register could hold on each citizen, including up to 10 fingerprints, digitized facial scan and iris scan, current and past UK and overseas places of residence of all residents of the UK throughout their lives and indices to other Government databases (including National

Insurance Number), which would allow them to be connected. Due to widespread concerns being expressed by human rights lawyers, activists, security professionals and IT experts, as well as politicians against the intrusive nature of the databases underlying the identity cards it was thought wise to scrap the entire scheme for the benefit of the general public vide the Identity Documents Act, 2010 which effectively repealed the Identity Cards Act, 2006.

(iii) The French Constitutional Council too found the law proposing the introduction of a new biometric ID for French citizens as unconstitutional. The Council raised objections against the creation of the huge biometric database considering the fact that the National Assembly had authorized the use of the database by the police for extended purposes from the identification of an accident victim to finding the authors of law infringements or crimes. The Council also drew the attention to the fact that the law did not specify the nature of the data and did not provide any guarantee for the integrity and confidentiality of these data and considered that the legislator has exceeded its competence in this matter.

16. In view of the facts and circumstances stated herein above, the Applicants herein respectfully pray that they may be allowed to intervene in the instant matter since any order passed in the present petition would have a direct bearing on the rights and interests of the Applicants as well as similarly placed persons of the weaker section of the society, who are purported to be the primary intended beneficiaries under the UID Scheme. It is therefore submitted that it would be in the interest of justice if the Applicants are permitted to intervene in the present petition and assist this Hon'ble Court on the questions of law raised.

PRAYER

In the premises it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) permit the Applicant to intervene in the present writ petition;
- (b) pass such other and further orders as this Hon'ble Court may deem fit and proper.

DRAWN & FILED BY

NIKHIL NAYYAR
ADVOCATE FOR THE APPLICANTS

Drawn on: 11.11.2013

Filed On: 14.11.2013

IN THE SUPREME COURT OF INDIA

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Versus

Union of India & Ors. ... Respondents

AFFIDAVIT

I, Ashok Pandey, aged 42 years, s/o Ganga Sagar Pandey, r/o
70/350 Jagdambe Vihar, Sagarpur (West) Gali No. 12, New Delhi-
110046, do hereby solemnly affirm and state as under:

1. That I am the authorized signatory on behalf of the Intervenor
No. 1/Applicant No.1 and as such am conversant with the facts
and circumstances of the case and am competent to swear to
this affidavit.
2. That the contents of the Intervention Application from pages 1
to 25 are facts true to my knowledge and the rest of the
application contains submissions and prayers to this Hon'ble
Court.
3. That the annexures filed along with the Intervention
Application are true copies of their respective originals.




DEPONENT

Julia
I Identify the Executant who
has Signed in my Presence

27

VERIFICATION:

I, the above named deponent do hereby verify and say that the contents of the affidavit hereinabove are true to my knowledge and nothing contained therein is false and nothing has been concealed there from.

Verified at New Delhi this the 27 day of November, 2013.

[Signature]
DEPONENT



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT
DELHI ON..... IDENTIFIED BY
22.11.2013 *Julia*
IDENTIFY THE EXECUTANT/DEPONENT WHO HAS
SIGNED IN MY PRESENCE

ATTESTED

[Signature]
RAJENDRA KUMAR Ph. 9212491692
NOTARY, DELHI-R-5780 9899446209
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No. 22.11.2013

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Versus

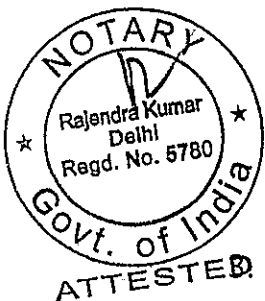
Union of India & Ors. ... Respondents

AFFIDAVIT

I, Indu Prakash Singh, aged 53 years, s/o Wg. Cdr. (retd.) DD Singh, r/o MANAVs, 18A, MIG Flats, Sheikh Sarai, Phase I, New Delhi-110017, do hereby solemnly affirm and state as under:

1. That I am the Intervenor No. 2/Applicant No.2 and as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. That the contents of the Intervention Application from pages 1 to 25 are facts true to my knowledge and the rest of the application contains submissions and prayers to this Hon'ble Court.

That the annexures filed along with the Intervention Application are true copies of their respective originals.



Indu
DEPONENT

29

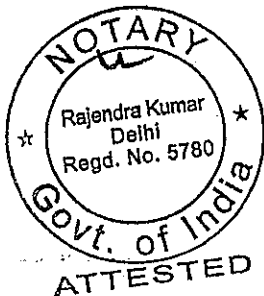
*Identify the Deponent who
has Signed in my Presence*

VERIFICATION:

I, the above named deponent do hereby verify and say that the contents of the affidavit hereinabove are true to my knowledge and nothing contained therein is false and nothing has been concealed there from.

Verified at New Delhi this the 22 day of November, 2013.

[Signature]
DEPONENT



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT
DELHI ON 22.11.2013 IDENTIFIED BY *[Signature]*
IDENTIFY THE EXECUTANT/DEPONENT WHO HAS
SIGNED IN MY PRESENCE *[Signature]*

ATTESTED
[Signature]
RAJENDRA KUMAR
NOTARY, DELHI-R-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No.

Ph. 9212491692
9899446209

ANNEXURE A-1

GOVERNMENT OF NCT OF DELHI

REVENUE DEPARTMENT

5, SHAM NATH MARG DELHI-110054.

No. F.10(6)/CCS/DiyCom/Hqrs/ 5130-5131

Dated: 20.12.2012

ORDER

It has been decided to use the Aadhaar platform for the delivery of various services rendered by the Revenue Department. Hence, it is considered necessary that the Aadhaar information of the applicants seeking the various services from the Revenue Department is to be compulsorily given at the time of applying for the service.

It is henceforth ordered that AADHAAR No. of the applicant, will be required to be mentioned compulsorily at the time of applying various services as mentioned below. The Aadhaar Card information of the applicants should be mentioned in the prescribed Application Forms.

1. Registration of Marriages under Hindu Marriage Act.
2. Registration of Marriages under Special Marriage Act.
3. Solemnization of Marriages.
4. Registration of various documents in the Sub Registrar Offices.

Specimen the modified Application forms of the above services are available on the website of Revenue Department (<http://revenue.delhi.gov.in>). The guidelines on "How to Integrate the Aadhaar for the various services rendered by Revenue Department, GNCTY are also available at this link and are enclosed with this order.

All the Deputy Commissioners are directed to ensure that this order is prominently displayed in the Notice Boards of the respective districts. General public may also be informed through permanent display of these conditions in the Notice Boards of the Revenue Department/District and also in the offices of Sub Registrar Offices. This order will come into effect from January 1, 2013.

This issues with the prior approval of the Secretary (Revenue).

Sd/- 20/12/2012

(Rajiv Kumar)

SDM(HQ)

No. F.10(6)/CCS/DivCom/Hqrs/

Dated:

Copy to:

1. All Deputy Commissioners, Delhi
2. All ADMs, Delhi
3. All SDMs, Delhi

4. All Tehsildars, Delhi
5. All Sub Registrars, Delhi
6. All SDMs (Hqrs)
7. SIO, Delhi State NIC HQ, Delhi Sectt, IP Estate, Delhi.
8. System Analyst to upload the order on the department's website
9. OSD to the Chief Secretary
110. PS to Secretary (Revenue)
11. PA to Special Secretary (Revenue)

Sd/- 20/12/2012

(Rajiv Kumar)

SDM(HQ)

GOVERNMENT OF NCT OF DELHI
REVENUE DEPARTMENT
5, SHAM NATH MARG DELHI-110054.

No. F.10(6)/CCS/DivCom/Hqrs/ 5130-5131

Dated: 20.12.2012

GUIDELINES/STEPS ON HOW TO INTEGRATE THE AADHAAR NUMBER
FOR VARIOUS SERVICES RENDERED BY REVENUE DEPARTMENT

These guidelines are applicable for the following services:

- Issue of certificates for SC/ST, OBC, Income, Domicile, Surviving Member, Solvency and Nationality.
- Issue of delayed Birth and Death orders.
- Registration of Marriage under Hindu and Special Marriage Act.
- Solemnization of Marriage.
- Registration of various documents, deeds, etc. at Sub Registrar Offices.

Guidelines / Steps

1. The applicant will submit the application form along with the supporting documents and also a copy of Aadhaar Card.

2. The application will only be accepted if the applicant's name, photo and address on Aadhaar Number matched with the details on the application form.
3. If Aadhaar No. has not yet been received, the applicant may provide the Aadhaar Enrolment No. details and any other identity proof (PAN/Voter's Card/Passport/Driving License/Office ID Card).
4. The photograph of the applicant will be taken by the concerned office.

Sd/-20/12/2012

(Rajiv Kumar)

SDM(HQ)

// TRUE TYPED COPY //

ANNEXURE A-2

GOVERNMENT OF NCT OF DELHI

REVENUE DEPARTMENT

5, SHAM NATH MARG DELHI-110054.

No.F.10(6)/CCS/Div.Com/Hqrs/ 2736

Dated: 18.12.2012.

ORDER

It has been decided to use the Aadhaar platform for the delivery of various services rendered by the Revenue Department. Hence, it is considered necessary that the Aadhaar information of the applicants seeking the various certificates from the Revenue Department is to be compulsorily given in the Application Forms itself.

It has, therefore, been decided to have the Aadhaar Card information of the applicants in the prescribed Application Forms used in the Revenue Department for availing various certificates. It is henceforth ordered that AADHAAR No. of the applicant, will be required to be mentioned compulsorily in the application form itself for the under mentioned certificates.

1. SC/ST Certificate
2. OBC Certificate
3. Domicile Certificate

4. Income Certificate
5. Birth Order
6. Death Order
7. Surviving Member Certificate
8. Solvency Certificate
9. Nationality Certificate

Specimen of the modified Application forms of the above certificates is available on the website of Revenue Department. (<http://revenue.delhi.gov.in>).

All the Deputy Commissioners are directed to ensure that this order is prominently displayed in the Notice Board of the respective districts.

General public may also be informed through permanent display of these conditions in the Notice Boards of the Revenue

Department/District. This order will come into effect from January 1, 2013.

This issues with the prior approval of the Secretary (Revenue).

Sd/-

(Rajiv Kumar)
SDM(HQ)

No.F.10(6)/CCS/Div.Com/Hqrs/

Dated

Copy to:-

1. All Deputy Commissioner, Delhi
2. All ADM, Delhi
3. All SDM, Delhi
4. All Tehsildar, Delhi
5. All SDMHQ
6. SIO, Delhi State NIC HQ, Delhi Sectt, IP Estate, Delhi.
7. System Analyst to upload the order on the department's website
8. PS to Secretary (Revenue)
9. PA to Special Secretary (Revenue)

Sd/-

(Rajiv Kumar)

SDM(HQ)

// TRUE TYPED COPY //

ANNEXURE A-3 (Colly.(i))

7/27/13 Aadhaar must for subsidised LPG Cylinder – Hindustan Times


Hindustan times

Saturday, July 27, 2013

Chetan Chauhan, Hindustan Times

New Delhi, January 13, 2013

First Published: 23:30 IST(13/1/2013)

Last Updated: 01:25 IST(14/1/2013)  Print

Aadhaar must for subsidised LPG cylinder

Farhim Bano and Urmashi Devi's common grouse of not having received Aadhaar number for a year has put them in danger of losing Rs. 3,000 -- yearly subsidy for six cooking gas cylinders.

The government from New Year has decided to make Aadhaar number mandatory for transfer of subsidy amount into the bank account of a LPG gas cylinders subscriber of oil companies in 43 pilot districts. It comes three months after the oil companies obtained bank account numbers of all its customers through new know your customer (KYC) regime.

A senior government official told HT that the shift from bank account to Aadhaar number was a step to put the cooking gas subsidy regime on

unique identification of Aadhaar payment-bridge, which the government has introduced on pilot basis in 20 districts from January 1 for seven central government schemes.

Once the new system comes into force, the entire subsidy would be transferred into the Aadhaar linked bank account, whose information the oil companies have already collected. "It will help us (the government) to keep a check on subsidy," the official said.

Bano and Devi, who does not understand the fiscal nitty gritty of new regime, are on a look-out for their Aadhaar number.

"I enrolled a year ago and haven't received Aadhaar number," she said, outside an Indian Oil gas dealer at Badli in north Delhi, wondering how she

TRANSFERRING SUBSIDY AMOUNT



300 million people enrolled

210 million Aadhaar numbers generated

140 million Aadhaar numbers dispatched

600 million people to be enrolled by October 2014

Mandatory Aadhaar

- * To get subsidised LPG cylinder in India
- * To avail of any government service in Delhi
- * To get registered with home ministry's National Population Register -- a legal requirement under the law.
- * Aadhaar valid proof of address and identity for opening a bank account, getting LPG connection, rail and air travel.

Aadhaar glitches

* UIDAI's new portal to download Aadhaar letters, check Aadhaar status or update one's demographic details not working for the past many days

- * Telephone numbers of many enrollment centres across the country are not functioning
- * Once Aadhaar letter dispatched, there is no way one can track it.

can get the most important number for her.

Like many other migrant labourers, including Devi, she had changed her home since Aadhaar enrolment and does not know whether she can get the number now or not. She was instructed by the gas dealer to visit an Aadhaar enrollment centre in Samaipur flocked many people having grievance similar to her.

The Unique Identification Authority of India (UIDAI) has enrolled about 300 million people but has dispatched Aadhaar to less than half of them. Most of those enrolled for Aadhaar number Home Ministry's national population register six months ago are yet to receive their numbers.

The only reprieve is that the new regime of transferring subsidy directly into bank accounts would be applicable from new financial year --- April onwards --- and by then the consumers can submit their Aadhaar numbers.

"Cash transfers will start with Aadhaar number and mostly likely in 43 pilot districts first," an official said. Currently, the price of a subsidised LPG cylinders in Delhi is Rs 410.42, against the market price of Rs. 895.50.

<http://www.hindustantimes.com/StoryPage/Print/989222.aspx>

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ANNEXURE A-3 (Colly.(ii))

Press Information Bureau

Government of India

Ministry of Petroleum & Natural Gas

15-May-2013 18:12 IST

Petroleum Minister announces launch of Direct Benefit Transfer for LPG scheme in 20 Districts

Government of India is launching Direct Benefit Transfer for LPG (DBTL) scheme in 20 high Aadhaar coverage districts (as annexed) from 1.6.13. The scheme aims to curb leakages and prevent black-marketing and provide subsidy to consumers in their bank accounts.

All LPG consumers are advised to immediately do the following to avail of subsidy in their bank accounts:

- Get an Aadhaar number if they don't have one at Aadhaar enrollment centers.
- Open a bank account with Aadhaar number if they do not have one by going to a bank branch with Aadhaar number.
- OR

If they already have a bank account then link their Aadhaar number with their bank account by visiting their branch or through a request form available with LPG distributors and deposit it in the drop boxes placed at LPG distributors premises.

- Provide Aadhaar numbers to LPG distributors for linking with LPG consumer number.

For the benefit of LPG consumers, OMCs have provided the facility on their websites to check whether the Aadhaar number has been attached to LPG consumer number/bank account.

For the benefit of LPG consumers, who cannot complete formalities by 1.6.13, a grace period of three months is being given to complete the formalities. After this period, all consumers who have not completed the formality will get LPG cylinders at market price, without any subsidy, till they complete the same.

The salient features of the DBTL scheme are described below:

- All LPG consumers desirous of availing subsidy will have to provide the Aadhaar number to Oil Marketing Companies and also to their bank accounts for linking with their LPG consumer numbers and bank accounts respectively.
- All Aadhaar linked domestic LPG consumers will get an advance in their bank account as soon as they book the first subsidized cylinder

even before delivery. This is to reduce their financial burden when they purchase the first LPG cylinder after launch of scheme at market rate.

- As soon as, the first cylinder is delivered to such consumers, subsidy eligible on date of delivery will again get credited in the bank account, which will then be available for the purchase of the next cylinder at market rate.
- Thus, subsidy eligible on each such domestic cylinder, up to the cap of 9 cylinders per year will be directly transferred to the Aadhaar enabled bank account of the consumer.
- All LPG consumers who are not Aadhaar linked will have three month grace period to link LPG consumer number and bank account with Aadhaar number and during this period they will continue to get the LPG cylinders at subsidized rate, as they are getting today, up to their entitlement.
- After the grace period, LPG cylinders will be sold to all domestic LPG consumers at market price. However, the subsidy will be transferred to only those who have linked Aadhaar in LPG database and Bank account. Others will not get any subsidy.

- After the grace period, as soon as a consumer links the Aadhaar number to bank account and in LPG database, one-time advance and subsidy transfer will re-commence as per balance entitlement.
- Consumers who do not provide Aadhaar will continue to get LPG cylinders at market price.

Annexure

List of 20 DBTL districts

State	District
Andhra Pradesh	Anantpur
	Chittoor
	East Godavari
	Hyderabad
	Ranga Reddy
Daman and Diu	Diu
Goa	North Goa
Himachal Pradesh	Bilaspur
	Hamirpur
	Mandi
	Una
Karnataka	Mysore
	Tumkur
Kerala	Pathanamthitta
	Wayanad
Maharashtra	Wardha
Pondicherry	Pondicherry
Punjab	SBS Nagar / Nawanshahar
	East Nimar (Khandwa)
Madhya Pradesh	Harda

Ministry of Petroleum and Natural Gas

New Delhi: May 15, 2013

RCJ/RKS

// TRUE TYPED COPY //

ANNEXURE A-4

IN THE HIGH COURT OF JUDICATURE, DELHI AT NEW DELHI

(Extraordinary Original Writ Jurisdiction)

Writ Petition (Civil) No.4996/2013

In the matter of a Public Interest Litigation:

The Unique Identification Scheme (hereinafter referred to as 'the UID Scheme'), *vide* the Notification No-A-43011/02/2009-Admn.I dated January 28, 2009.

And in the matter of:

1. BEGHAR MAZDOOR FOUNDATION

Through its Secretary,

Sh. Ashok Pandey

C-1/13, 1st Floor

Vashisht Park,

New Delhi-110046

...Petitioner No.1

2. INDU PRAKASH SINGH

MANAVs, 18 A,

MIG Flats, Sheikh Sarai, Phase- I,

New Delhi-110 017

...Petitioner No.2

Versus

1. UNION OF INDIA

Through the Ministry of Planning

Yojana Bhavan, Sansad Marg,

New Delhi- 110001

Respondent No. 1

2. THE UNIQUE IDENTIFICATION AUTHORITY OF INDIA

Planning Commission,

Government of India,

3rd Floor, Tower II,

Jeevan Bharati Building,

Connaught Circus,

New Delhi - 110001

...Respondent No. 2

3. THE GOVERNMENT OF NCT, DELHI

Level - 3, A - Wing,

Delhi Secretariat,

New Delhi - 110002

...Respondent No.3

PUBLIC INTEREST LITIGATION UNDER ARTICLE 226 OF THE
 CONSTITUTION OF INDIA PRAYING *INTER ALIA*, FOR A WRIT OF
 MANDAMUS, OR ANY OTHER APPROPRIATE WRIT, ORDER OR
 DIRECTION QUASHING THE UID NOTIFICATION NO-A-
 43011.02/2009 DATED JANUARY 28, 2009

To

The Hon'ble Chief Justice and

His Lordship's Companion Judges of the

Hon'ble High Court of Judicature, Delhi at New Delhi

THE PETITIONERS ABOVE NAMED MOST RESPECTFULLY SUBMIT

AS UNDER:

1. The instant Public Interest Litigation is being preferred by the
 Petitioners, being aggrieved by the implementation of the Unique

Identification Scheme (hereinafter referred to as 'the UID Scheme'), pursuant to the Notification No-A-43011/02/2009-Admn.I dated January 28, 2009. Under the instant notification the Respondent No.2, UIDAI, is issuing Unique Identification numbers (hereinafter referred to as 'UID') or "Aadhaar" numbers to every resident of India, by collecting demographic and biometric information that is unique to every individual. The collection of personal identifying information for the issuance of UID number is highly invasive and raises serious concerns regarding the security of critical personal and biometric information which is in complete violation of the right to privacy and dignity which forms part of the right to life under Article 21 of the Constitution of India.

2. The collection of vital personal data collected for the purposes of issuance of the UID number by the Respondent No. 2, is without any legislative authority/sanction, and in the absence of any data protection laws regulating the use and disclosure of such personal data. Further, the Respondent No. 3, the Government of NCT, has made the UID Number/Aadhaar a condition precedent for access and entitlement to the various critical services and utilities provided by it.

3. Due to such implementation of the UID Scheme without legal authority many citizens in Delhi, especially those who are poor and marginalised have been rendered ineligible for availing the services and schemes offered by the State. It is pertinent to note that it is in fact the poor and the marginalized who are the primary intended beneficiaries of these services and schemes, and the sole reason they are precluded from availing them is the mandatory and arbitrary imposition of the UID by the State. The insistence of the Respondent No.3 on UID being the only acceptable proof of identity has rendered other proofs such as voter ID cards and ration cards redundant. Considering that the beneficiaries of the welfare schemes implemented by the State are typically people below the poverty line or marginally above it, they are left with no choice but to tow the State's line and obtain a UID without understanding the implications of unquestioningly parting with personal information to the State. Consequently, aggrieved by the notification of the UID, and the manner of its implementation, the Petitioners herein were constrained to file the instant Petition before this Hon'ble Court. The facts in the instant Petition have been gathered from public documents such as the notifications available on the official website of the Respondent No.2 and Respondent No.3. The facts in the instant Petition primarily relate to the notification themselves and the

interpretation of the law adopted by the Respondents as reflected by the Impugned notifications.

DESCRIPTION OF THE PETITIONERS

4. Petitioner No.1 is a foundation constituted by homeless people, who by their collective efforts are endeavouring to make homeless citizens within Delhi self-sufficient. Since its inception in the year 2001, the Petitioner No.1 has invested efforts in providing a sustainable means of livelihood for the homeless and has also strived to record their existence by facilitating identity proofs such as a ration card. For the past few years, the Petitioner No.1 has been diligently committed to the cause of recognition of the voting rights of homeless citizens, their proper employment and providing them with affordable housing. Mr. Ashok Pandey is the Secretary of the Petitioner No.1, and has been duly authorized to file the instant petition. The Board Resolution dated 12th July, 2013 whereby Mr. Ashok Pandey has been authorized to institute the instant petition on behalf of Petitioner No.1 is attached herewith and annexed as ANNEXURE P/1.

5. Petitioner No.2 is a human rights defender and a feminist who enlisted himself to the cause of women's rights from the year 1982. He is an author of four books on Women's issues: Women's

Oppression, Men Responsible, Women, Law and Social Change in India (London & New Delhi), Indian Women: The Captured Beings, Indian Women: The Power Trapped. He is also actively involved with the functioning of SHELTER- Sustaining Housing, Health, Education & Livelihoods through Empowerment and Rights Intervention, City Makers Programme, since December 2009. He has been recognized for many of his contributions, as he has been bestowed with the CNN- IBN (IBN 18 & Network 18) "Citizen Journalist Award" on February 15, 2010. He was also chosen as the "Person of the Year, 2003" by the First City magazine of Delhi. In fact, the Petitioner No.2 had actively been involved with Petitioner No.1 in the sincere efforts of ensuring that the homeless in Delhi got themselves enrolled for the UID Number. However, due to inherent flaws evident on the very face of the UID Scheme, it was clear that aiding the implementation of the scheme would in effect amount to abetting the violation of the fundamental rights of the homeless and the poor.

6. The Petitioners have no personal interest in the instant litigation, and the Petition is not guided by self gain or for gain of any other person/institution/body, and there is no motive other than public interest in filing the instant public interest writ petition. However, since the impugned notifications violates the fundamental rights

of the general public, not all of whom may have the resources to defend themselves against the arbitrary policies of the Respondents, the instant petition has been filed by the Petitioners in representative capacity. The relief sought in the PIL is bound to affect the notifications/circulars issued by the Respondents and also the general public who are directly impacted by the said notifications. However, there is no need to implead any other member of the general public to the instant suit for deciding the same on merits. The Petitioner has limited resources and has the means to pay costs if any imposed by the Hon'ble Court.

7. Respondent No.1 is the Nodal authority responsible for the issuance of the UID Notification dated January 28, 2009. Respondent No.2 is the entity responsible for the implementation of the UID Scheme. Respondent No.3 is responsible for mandatory imposition of UID Scheme within the territory of Delhi.

FACTS LEADING TO THE PETITION

8. The Petition is concerned with the UID/Aadhaar scheme introduced in 2009 by the Respondent No. 1 with the intention of identifying all the residents of the country with a 12-digit, unique, universal and ubiquitous identification number ("UID number").

The UID scheme, also named "Aadhaar", aims at issuing to all residents of India a universal identification number, linked with every person's biometric and personal data which will be stored on a centralized database.

9. Pursuant to this object, on January 28, 2009, the Respondent No.1 notified the establishment of the Respondent No.2 as an executive body *vide* Notification No-A-43011/02/2009-Admn.I. Thus, the Universal Identification Authority of India ("UIDAI") was set up as an office attached to the Planning Commission. The role of the UIDAI was to develop and implement the necessary institutional, technical and legal infrastructure to issue the UID numbers to residents of India. A copy of the Notification dated January 28, 2009 is annexed herewith as ANNEXURE- P/2

10. Thereafter on July 23, 2009, the Prime Minister's Council of UIDAI was set up to advise the Respondent No. 2, and to ensure co-ordination between the various Ministries and Departments for the UID Scheme. One of the most important objectives of the Council was to set up a legislative framework for the UID for it to function within a legal framework. However, till date, absolutely no national legislation authorizing the setting up of UID and empowering it to collect and use personal biometric data of

residents has been enacted. More importantly, in India there are no data protection laws to secure the information collected by the UIDAI.

11. After the Respondent No. 2 was set up, the Respondent No. 1's Ministry of Planning submitted a report titled as "UIDAI Strategy Overview" (hereinafter referred to as 'the Strategy Overview') in April 2010. According to the Strategy Overview, the UIDAI is meant to issue UID numbers in an effort to create a system of unique identification that is robust, capable of eliminating duplication of identity and thereby identity fraud, and which could be authenticated in a cost-effective manner. The UIDAI would enrol *willing residents* into a central database, i.e the Central Identities Data Repository (hereinafter referred to as 'the CIDR'), following their verification on the basis of demographic and biometric data. The Strategy Overview states that the UID scheme is voluntary and will involve a partnership between existing Government infrastructure and private agencies. A copy of the Strategy Overview submitted in April 2010, is annexed herewith as ANNEXURE- P/3.

12. Thereafter, the Respondent No. 2 also prepared a Draft National Identification Authority of India Bill ("NIAI Bill") inviting public

comments. However, the NIAI Bill, the final draft of which was introduced in the Rajya Sabha on December 3, 2010 by the Ministry of Planning, was rejected on account of glaring inadequacies and ambiguity in many of its provisions, and especially due to concerns expressed about the privacy of the data collected under the UID project. A copy of the Draft Bill inviting public comments and a copy of the final bill introduced by the Ministry of Planning is annexed herewith as ANNEXURE-P/4.

13. In the meantime, a Biometrics Standards Committee ("BSC") was established in order to frame biometrics standards to be complied with by the UIDAI and its enrolling partners. The BSC submitted a report in December 2009, prescribing the biometrics parameters to achieve the UIDAI's mandate, along with the best practices, expected accuracy, and other related issues. The biometric details that were prescribed for collection by the BSC were as follows:

- (i) face recognition by collection of photographs,
- (ii) ten fingerprints and,
- (iii) Iris scans of each person.

A copy of the Report titled "Biometrics Design Standards for UID Applications" by the UIDAI Committee is annexed herewith as

ANNEXURE- P/5.

14. Thereafter, in September, 2010, the UID scheme was formally launched in Tembhli village in Nandurbar District, Maharashtra and the UID number was given the popular name of "Aadhaar". A copy of the Press Note issued by the Government is annexed herewith as ANNEXURE-P/6.

15. It is respectfully submitted that on December 13, 2011, the Standing Committee on Finance submitted its Report on the NIAI Bill, 2010. The Standing Committee concluded in its Report that the issuance of Aadhaar numbers or UID numbers, pending passing of the Bill by Parliament, militated against Parliamentary protocol. The Report expressed serious concerns on issues relating to privacy and security of UID data, and the requirement of collection of iris images. It specifically noted that although the Aadhaar scheme was claimed to be voluntary, if services and benefits are linked to it, it could end up becoming mandatory. It also noted that the enactment of a national data protection law is condition precedent when personal data was being collected at such a large scale and was being linked to databases. In the absence of such data protection legislation, it was observed that it would be difficult to deal with access and misuse of personal

information, surveillance, profiling, linking and matching of databases and securing confidentiality of information. Some of the concrete concerns contained in the said Report are as follows:

(a) The decision to confer statutory authority on the UIDAI had been deferred since November, 2008 when it was first conceptualised, with no apparent justification or reason. The lack of statutory authority prevents UID from addressing key issues relating to functioning and penalizing defaulters; thereby bringing into question the effectiveness of the UID scheme;

(b) It was observed that the Parliament must closely examine the consequence of collection of biometric and personal information, without effecting an amendment to the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Number) Rules, 2003;

(c) The UID number's purpose is unclear in light of existing alternative means of identification that continue to be in practice. This renders false the exaggerated claims of UID being a unique universal identification system;

(d) The issuance of both UID numbers and smart cards creates

confusion owing to duplication of crucial personal and biometric data. This duplication may also lead to a rampant incidence of identity fraud;

(e) There is confusion regarding the voluntary nature of the UID number as it is linked to the access to several welfare services.

(f) The UID scheme is ineffective in bringing all sections of the population under its ambit owing to two factors - (i) the UIDAI's lack of statistical data and (ii) the population's large dependency on manual labour leading to the the high estimated failure of biometrics (15%). The failure of biometrics further leads to high risk of impersonation by certain individuals at the time of enrolment for the issue of UID number.

(g) The collection of information for the purpose of the UID scheme also raises serious issues relating to the misuse or unauthorised access to the Central Identities Data Repository (hereinafter referred to as 'the CIDR').

A copy of the Report of the Standing Committee on Finance (2011-12) to the Lok Sabha on the NIAI Bill, 2010 is annexed herewith as ANNEXURE – P/7.

16. It is submitted that despite the Standing Committee's rejection of the NIAI Bill, 2010, the process of issuing of UID or the Aadhaar numbers has continued. It was reported that as on February 2013, more than 27 crore UID numbers have been issued by Respondent No.2. In other words, personal information has been collected from 27 crore residents, without any data protection law in place and without any statutory authority. There is absolutely no legislation safeguarding the use of the personal biometric and other identifying information of residents, nor is there any legal authority behind Respondent No.2 validating the collection of such information.

17. It is submitted that the UID scheme has been universally criticised especially for its exaggerated claims of simplifying access to welfare services. In an effort to create an integrated data, the UID scheme runs the risk of hastily combining data and processes involved with other welfare schemes such as the Public Distribution System and the National Rural Employment Guarantee Act. A copy of an article criticising UID, titled 'The UID Project and Welfare Schemes', published on February 26, 2011 in the Economic and Political Weekly is annexed herewith as ANNEXURE P/8. A copy of another article titled as 'Unique

Identity Bill', published on July 24, 2010 in the Economic and Political Weekly is annexed herewith as ANNEXURE-P/9.

18. It is further submitted that the Ministry of Home Affairs too had identified several flaws in the enrolment process of the UID scheme while issuing UID numbers to individuals on the basis of false affidavits. The Ministry of Home Affairs has identified gaps in the security of the biometric data being collected by the UIDAI. A copy of the newspaper article titled "Cracks appear in Unique Identification Authority of India's enrolment process", dated September 6, 2011 published in The Economic Times is annexed herewith as ANNEXURE - P/10.

INVOLVEMENT OF PRIVATE AGENCIES IN COLLECTION OF PERSONAL DATA

19. It is respectfully submitted that despite unanimous opposition to the Draft NIAI Bill, and concerns being voiced about the misuse of biometric data being collected, among other security issues, the Respondent No. 2 has made absolutely no efforts to first initiate and evaluate pilot projects to study the ramifications and efficacy of the UID Scheme before implementing it throughout the country. In fact, in a haste to ensure maximum enrolment to the

UID Scheme, and in complete disregard of any security concerns, the Respondent No. 2 directed the enlistment of private enrolment agencies who were required to work in coordination with the appointed Registrars of UIDAI in every State for the collection of sensitive personal information. While directing the involvement of private parties, the Respondent No.2 failed to ensure the establishment of any concrete security guidelines that would prevent exploitation of personal data collected, to serve commercial interests. On the contrary, the guidelines issued to these private Enrolling Agencies (hereinafter referred to as 'EAs'), are shockingly revealing of the lackadaisical approach of the UIDAI towards data security and privacy protection:

(1) It was specified that it is the responsibility of the EAs and not the Respondent No.2 to make sure that the data is kept secure and confidential. Besides, there were absolutely no guidelines to the Respondent No.2 to ensure the safety of the personal data collected by the EAs.

(2) There is no contract regulating the relationship between the EAs and the Respondent No.2, and the latter has absolutely no statutory sanction either to ensure

compliance of any of its general guidelines by the EAs.

Therefore, it is clear that the Respondent No.2 has failed to ensure the security of the crucial personal data collected during the enrolment process. Moreover, the onus of maintaining the standards of confidentiality and privacy is essentially on the Respondent No. 2, which it has conveniently passed on to the EAs. A copy of the guidelines titled as "Empanelment of Enrolling Agencies For Undertaking Demographic And Biometric Data Collection for UID Enrolment" dated May 11, 2011 is annexed herewith as ANNEXURE-P/11.

20. Another cause for concern is that the Respondent No.2 has made absolutely no efforts to examine the constitution of the private agencies coming forward to participate in the enrolment process. There are many private agencies which have substantial foreign involvement, and thus collection of personal data of an Indian resident by them poses serious threats to national security. The Respondent No.2 has summarily dismissed this concern by merely stating that there is no way to verifying the antecedents of private companies. The relevant Appeal order dated July 21, 2011 passed by the Deputy Director General & Appellate Authority to this specific query, wherein at Para 3.3 it is stated that "*there is no*

means of verifying whether the said companies/organisations are of US origin or not" is annexed herewith as ANNEXURE-P/12.

MAKING THE UID MANDATORY

21. It is submitted that although the UID was conceptualized to be purely 'voluntary', in practice the Respondents have made the requirement of UID or Aadhaar number mandatory for availing several essential services. According to the website of the Respondent No.2, Aadhaar was never intended to be mandatory, nor was it intended to replace other IDs. Its basic objective was to facilitate identification of those residents who have no means of establishing their identity, so as to empower them to receive the benefits due to them from the State. However, with the proposed scheme of making Aadhaar mandatory, Respondent No. 3 has effectively denied its residents the benefits that they are otherwise legally entitled to receive. The webpage indicating the initial purpose of the UID/Aadhaar is annexed herewith as ANNEXURE-P/13.

22. It is further pertinent to note that most of the services made accessible upon subscribing to the UID Scheme are directly intended for the poorer sections of the society. The Petitioner No.1 and other poor and marginalized residents of India are

portrayed to be the prime target for the many welfare schemes sought to be implemented by the Respondents and other State Governments. In the event the poor and the marginalized communities refuse to obtain the UID on account of the release of personal data, they would be deprived of essential services. Thus the Respondent's action of imposing a mandatory condition for availing benefits that are rightfully theirs, and leaving them without any option to exercise their right to not divulge any personal data or submit biometric information is a gross violation of their fundamental rights and abuse of the power of the State. Following are instances where the UID has been made mandatory by the Respondent No.3 for essential services:

(d) Marriage Registration and Registration of other documents: A notification dated December 20, 2012, required that the Aadhaar number of the applicants should be mandatorily mentioned in the prescribed application forms for registration of marriages under the Hindu Marriage Act, 1955, registration of marriages under Special Marriage Act, 1954, solemnisation of marriages and registration of various documents in the sub-registrar's office. A copy of the notification dated December 20, 2012 is annexed herewith as ANNEXURE – P / 14.

(e) The Revenue Department of Delhi: The Revenue Department of Respondent No.3, notified that the UID number/Aadhaar is mandatory for procuring SC/ST certificate, income certificate, etc.. A copy of the notification dated December 18, 2012 is annexed herewith as ANNEXURE – P / 15

(f) LPG connections: Respondent No.3 from January 1, 2013 has decided to make Aadhaar number mandatory for transfer of subsidy amount into the bank account of a LPG gas cylinder subscriber of oil companies in 43 pilot districts within the state of Delhi. Reliance in this regard is placed on the article dated January 13, 2013 titled as "Aadhaar must for subsidized LPG cylinder" and the Notification dated May 15, 2013 titled as "Petroleum Minister announces launch of Direct Benefit Transfer for LPG Scheme in 20 Districts" which is attached herewith and annexed as ANNEXURE– P/16 Colly.

In light of the essential services mentioned hereinabove, it is clear that the possession of a UID number/Aadhaar has been mandatorily imposed on the general public with the homeless and the poor bearing the brunt of its impact.

COLLECTION OF PERSONAL BIOMETRIC DATA- INTERNATIONAL
LEGAL PERSPECTIVE

23. It is submitted that for the purpose of data protection, the world over in all international instruments, treaties and conventions, biometric data is recognised as a sensitive category of personal data and therefore it to be subject to special protection. Anywhere in the world, where biometric data is being collected by certain governments, adequate safeguards by way of Data Protection Laws have been promulgated, to ensure the security and the integrity of the personal data, prior to its collection. In the European context, '*personal data*' is defined as '*any information relating to an identified or identifiable individual*'. A similar approach has been adopted in the United States, Israel and Australia.

24. According to the Progress Report on the Application of the Principles of Convention 108 to the Collection and Processing of Biometric Data (2005) issued by the Council of Europe, as soon as biometric data is collected with the view of being automatically processed in order to be linked to an identified or identifiable person, it becomes personal data and is thus eligible for data protection and privacy. The United Nations Declaration on Bioethics and Human Rights adopted on October 19, 2005, also clearly establishes that a person's identity includes the biological,

the psychological, social, cultural and spiritual dimensions. A copy of the Progress Report on Biometrics, is annexed herewith as ANNEXURE – P/17. Also a copy of the UN Declaration on Bioethics and Human Rights is annexed herewith as ANNEXURE – P/18.

25. Further, it is submitted that Article 2(a) of the European Parliament's Directive 95/46/EC (hereinafter referred to as 'the Directive 95/46/EC) defines "personal data" as:

"Article 2(a) : 'personal data' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity."

In accordance with the aforementioned definition, the Working Document 80 on Biometrics under the Directive 95/46/EC states that measures of biometric identification or their digital translation in a template form in most cases are to be considered personal data. A copy of the Directive 95/46/EC is annexed herewith as ANNEXURE – P/19. A copy of Working Document on Biometrics dated August 1, 2003 is annexed herewith as

ANNEXURE – P/20. Thus, biometric data of an individual is his personal identifiable data, which cannot be collected by the Respondents for the UID scheme without proper and effective data protection and privacy legislation authorizing the collection of such data and regulating the use and safety of such data.

26. The CCPR General Comment No. 16 on the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, issued under Article 17 of the International Covenant on the Civil and Political Rights, which India has ratified, states explicitly in Paragraph 10 that, *"The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant."* A copy of General Comment No. 16 is annexed herein and is marked as ANNEXURE – P / 21.

27. In fact many countries world over are now realizing the possible ramifications of requiring its citizens to submit their personal data

and biometric information. In this regard, it is important to have regard to the decision of the Philippines Supreme Court in the case titled "Ople v/s Torres". In the said case, which had a similar factual matrix as to the present Petition, the Apex Court of Philippines had quashed the Administrative Order No. 308 entitled as "Adoption of a National Computerized Identification Reference System" on the grounds of it being violative of the Right to Privacy. The Administrative order No. 308 aimed to provide the citizens and foreign residents of Philippines with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities. In order to achieve this goal it was decided that a computerized system would be required to properly and efficiently identify persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations. Pursuant to this, the notification directed the generation of a Population Reference Number (PRN) generated by the National Statistics Office which would serve as the common reference number to establish a linkage among concerned agencies through the use of "Biometrics Technology" and "computer application designs". The Hon'ble Philippines Supreme Court ultimately held that Administrative order No. 308 had to be set aside since it lead to the usurpation of the power of

Congress to legislate, and it allowed impermissible intrusion into the citizenry's protected zone of privacy. It was observed that:

"The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards, a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."

A copy of the Philippines judgment in *Ople v/s Torres*, [G.R. No. 127685. July 23, 1998], is attached herewith and marked as

ANNEXURE-P/22.

28. Further in the UK, the Identity Cards Act, 2006 which was promulgated to provide National Identity Cards, a personal identification document and European Union travel document, for all its citizens, which would be linked to a database known as the National Identity Register (NIR), was repealed in the year 2010. The Act specified fifty categories of information that the National Identity Register could hold on each citizen, including up to 10 fingerprints, digitized facial scan and iris scan, current and past UK and overseas places of residence of all residents of the UK throughout their lives and indices to other Government databases (including National Insurance Number) – which would allow them to be connected. Due to widespread concerns being expressed by human rights lawyers, activists, security professionals and IT experts, as well as politicians against the intrusive nature of the databases underlying the identity cards it was thought wise to scrap the entire scheme for the benefit of the general public. A copy of the Identity Documents Act, 2010 which effectively repealed the Identity Cards Act, 2006 is attached herewith as ANNEXURE-P/23.

29. The French Constitutional Council too found the law proposing

the introduction of a new biometric ID for French citizens as unconstitutional. The Council raised objections against the creation of the huge biometric database considering the fact that the National Assembly had authorized the use of the database by the police for extended purposes from the identification of an accident victim to finding the authors of law infringements or crimes. The Council also drew the attention to the fact that the law did not specify the nature of the data and did not provide any guarantee for the integrity and confidentiality of these data and considered that the legislator has exceeded its competence in this matter. A copy of the article titled as "France: Biometric ID Database Found Unconstitutional", dated March 28, 2012 is attached herewith as ANNEXURE-P/24.

GROUND REALITIES: CERTAIN INSTANCES REFLECTING UPON THE KINKS IN THE UID SCHEME

30. It is respectfully submitted that among the technological features of Aadhaar, the collection of biometrics is most significant. It is pertinent to note that there is no accurate information existing on whether errors of fingerprint matching are negligible or non-existent. A small percentage of users would always be either falsely matched or not matched at all. As per the report from 4G

Identity Solutions, a supplier and consultant for Respondent No.2, people above 60 years and children below 12 years could have difficulties in enrolling with fingerprints. Further, fingerprints of manual labourers are likely to be broken or eroded, apart from accidental damages to fingers from burns, chemicals, and other agents. Owing to such poor data, the failure to enroll is as high as 15 per cent in India, which would easily translate into 180 million persons that could be rejected on the solely on account of the poor quality of their biometrics. If fingerprint readers are installed at MGNREGS work sites and PDS outlets, and employment or purchases are made contingent on authentication, there is every possibility that about 180 million persons will be excluded from accessing these schemes. The report of the 4G Identity Solutions titled as "De-duplication- The Complexity in the Unique ID context" is attached herewith and annexed as ANNEXURE-P/25.

31.A biometric identification system basically involves the matching of measured biometric data against previously collected data, the reference database, for a given individual. Since the sources of uncertainty in a biometric system are many, this can only be approximate. So biometric systems can only provide probabilistic results. Even the best designed biometric systems will be incorrect or indeterminate in a fraction of cases, and both false

matches and false non-matches will occur.

32. It is respectfully submitted that under Aadhaar, there is no provision to refuse registration if the quality of biometric information is poor. In such circumstances there is a prescription for "forced capture". When the fingerprints do not leave an impression the first time, they are pressed against the plate a second and a third time, and when a fourth attempt fails, the machine gives up, records what is on offer, and the programme will let the rest of the enrolment proceed. The Respondent No.2 has been silent on the consequences of such forced capture.

33. To substantiate the above stated facts reliance is placed on various news reports which state that working-class women in Mumbai were unable to enroll themselves because of blisters and calluses and the effect of abrasive detergents on their hands. More recently, in August and October 2012, there were reports from Bangalore and Delhi that senior citizens were unable to get enrolled because their fingerprints did not work. Reliance in this regard is placed on the article titled as "Enrollment Saga" dated November 19, 2011 which is annexed herewith as ANNEXURE-P/26.

34. The fact that there is every possibility of misuse of the biometric

data has been duly explained to the Respondents by a proper report titled as "Spoofing of Fingerprint" on September 30, 2011, by J.T. D'Souza, Managing Director of SPARC Systems Limited. He had also demonstrated to the officials in the Planning Commission how, using some Fevicol and candle wax, that he could easily spoof a fingerprint and use it to authenticate someone else. The video of his demonstration is available on the following link:- https://www.youtube.com/watch?v=0a96L_SphR4. A CD containing the interview of Mr. J. T. D'Souza demonstrating the flaws in the fingerprint reader used by the UID officials, provided at the link mentioned above is attached herewith and annexed as ANNEXURE-P/27. Reliance is further placed on other news reports of faking fingerprints. Even though the Respondents have been made well aware of such perils, they have ignored the same and have refused to take any concrete measures. A copy of the news reporting titled as "Doctor 'used silicone fingers' to sign in for colleagues" dated March 12, 2013 is attached herewith and annexed as ANNEXURE-P/28.

35. There have also been reports of fake UID Number/Aadhaar being issued by unscrupulous individuals. According to a news report, five persons were arrested in Bangalore for issuing fake UIDs. The

lack of any legislative framework to ensure strict penalties in the case of above mentioned instances is one of the many reasons which clearly demonstrate the unsustainable planning and policy-making behind the UID Scheme. The Article titled as "Five in Police net for issuing fake Aadhaar Cards" dated July 21, 2011 is attached herewith and annexed as ANNEXURE-P/29. The article titled as "Indore Aadhaar cards seized from Youth Congress Leader" dated March 23, 2013 is attached herewith and annexed as ANNEXURE-P/30.

36. The introducer system established under the UID Scheme for the benefit of people without any source of identification, is also flawed due to the complete lack of any guidelines or any liabilities being chalked out against an introducer. According to the introducer system when one person is enrolled then he can validate the enrollment of persons known to him. However, since there are no laws at present imposing criminal liability on the introducer, the said process has already been subject to many manipulations. It was reported that a doctor in a Tilak Nagar Hospital in Bangalore was found blindly signing certificates presented to him by touts who were collecting Rs.100 a certificate.

37. Another common problem faced while issuing a UID Number is that the enrolment form is not complete without an address to which the UID can be sent. In certain circumstances, NGOs lend their addresses to homeless people to secure the UID number. It was observed that in such instances the columns asking for "information sharing consent" and for being given an Aadhaar enabled bank account were ticked without anyone asking the enrollees whether they had other views on the subject. Moreover, as per a report over 250 letters from the UIDAI were addressed to the said NGOs, however, various homeless people were proving difficult to locate. Regardless there have also been many instances of inordinate delays on the part of the Respondents to issue the UID Letters to the homeless, which has further aggravated their problems, since they can't avail certain benefits provided by Respondent No.3 till they receive their UID Numbers. The article titled as "Homeless people wait for months for their Aadhaar cards" dated January 12, 2013 is attached herewith and annexed as ANNEXURE-P/31. In light of the aforementioned facts and the grounds stated hereinbelow the UID Scheme deserves to be set aside till there is a proper legislative framework ensuring its proper implementation.

GROUNDS:

(i) BECAUSE the UIDAI, Respondent No.2 is only an executive body, and it does not have the constitutional authority to encroach into matters that come within the Legislative ambit. At present the UID Scheme is without any legal sanction or statutory recognition. Respondent No.2, merely on the basis of an executive notification, has been illegally collecting personal identifying information from crores of residents, without absolutely no legislative framework or guidelines. The limits of executive legislation cannot be expanded unduly to result in eroding the very legislative powers of the Parliament. The establishment of a universal identification number for every resident in India, and the collection of personal data, mandates that various contending state policies, such as primacy of national security, the safety of the private information collected and the choice of policies to be implemented are carefully studied and reflected in a legislation which provides for the safeguard of the information sought to be collected.

(ii) BECAUSE the issuance of UID number, without any data protection laws being in place within India, and without the NIAI Bill being enacted, is likely to lead to instances of

identity duplicity, fraud or unauthorized access to the personal data of residents for unlawful purposes. The NIAI Bill is the only proposed legislation that encapsulates within itself certain provisions that imposes criminal consequences, in case of misuse of personal data of any person. Without such a legal framework being in place, prior to collection of highly sensitive and personal data, that too by some private enrolling agencies, and in this day and age of technological advances, is bound to lead to heavy and dangerous compromises being made on the fundamental rights of Indian citizens.

- (iii) BECAUSE the UID scheme suffers from excessive delegation and therefore deserves to be set aside. In the present scheme of the UID, the executive, i.e. Respondent No.2 is being empowered with excessive and unaccountable powers, which is in complete contravention of the Constitution. Since its very inception the Respondent No. 2, has been empowered to take any decision it deems fit, to build a database containing the private details of the residents of India. Even though the intent behind the same appears to be noble, the fact that absolutely no restraint or guideline has been prescribed to the said authority is

evidence in itself of the excessive delegation that has lead to the instant petition. The notification dated January 28, 2009 pursuant to which Respondent No. 2 was established, reflects the untrammelled power that has been vested in the UIDAI Authority in the absence of any specific guidelines which would be pertinent to identify the necessary metes and bounds within which the UIDAI would function. It has not only been given the responsibility to collect the data, but is also empowered to frame policy decisions pertaining to its use, which can only be responsibly decided by the Parliament. The wide powers devolved upon UIDAI is a classic example of excessive delegation, and when these powers directly interfere with fundamental rights such as right to privacy, right to life, etc. they deserve to be struck down as being ultra vires and unconstitutional.

- (iv) BECAUSE the collection of personal data of every resident person in India, without any legislation or data protection law being in place is a gross violation of the Right to Privacy enshrined in Article 21 of the Indian Constitution. The Hon'ble Supreme Court has in a plethora of judgments held that Right to Privacy forms an integral part of the right to

life guaranteed under the Constitution. It is therefore clear that in the present facts and circumstances, the Right to Privacy includes the right against non-interference with one's personal identifying data such as biometric data of fingerprints, facial and iris scans and the collection of any other personal data by the Respondent No.2 under the proposed UID scheme without any legislative authority or legal safeguards against its misuse.

- (v) BECAUSE though the UID scheme had initially claimed to be a voluntary initiative, contradictorily, the Respondent No.1 and Respondent No.3 have made the UID or Aadhaar numbers mandatory in order to access welfare schemes and services across the country, which the residents are otherwise entitled to. Not only has the mandatory requirement resulted in non-consensual extraction of personal information, it is also in complete loggerheads with the stated intent behind the UID initiative. The stated goal was never to replace existing IDs, but was to in fact facilitate the identification of those residents who have no means of establishing their identity, so as to empower them to receive the benefits due to them from the State. The fact that presently a resident has to forego a welfare

benefit or is otherwise subject to detriment due to his or her failure to secure a UID number, inspite of having other valid IDs to prove his/her identity is a gross violation of the Right to Life under Article 21 of the Indian Constitution.

(vi) BECAUSE the Right to Privacy under Article 21 has particular relevance for the biometric information being collected under the UID scheme. The right to respect for private life and dignity implies respect for a person's body which may be interfered with in the collection and use of bodily features. Collection of biometric data might also reveal sensitive data about a person and lead to its misuse, which especially in light of no legal regulation monitoring any illegalities, is a gross violation of the Right to Life under Article 21 of the Indian Constitution.

(vii) BECAUSE the very act of the UIDAI of outsourcing its enrolment work to private agencies, in the absence of any guidelines whatsoever, is in itself a blatant violation of the Right to Privacy. It is also pertinent to note that absolutely no standards have been prescribed for maintaining the standards of confidentiality of information, or to secure the manner in which the collected information is kept, and to prevent its misuse. In light of the fact that no privacy laws

are in force in India, UID would lead to adverse consequences.

(viii) BECAUSE the right to privacy has been recognised by the Hon'ble Supreme Court as being an integral part of the right to life guaranteed under the Constitution. In *R. Rajgopal v. State of Tamil Nadu* AIR 1995 SC 264, this Apex Court held that the right to privacy is implicit in the right to life and liberty guaranteed to all persons by Article 21 of the Constitution of India, and that it is a right to be left alone. In the case of *PUCL v. Union of India* 1997(1)SCC 30, the Supreme Court laid down the standards for telephone wire tapping and observed that the right to privacy is an integral part of the fundamental right to life enshrined under Article 21. This Hon'ble Court also acknowledged the right to privacy in the case of *Mr. 'X' v. Hospital 'Z'* 1998 8 SCC 296. The right to privacy includes the right against interference with one's personal identifying data such as biometric data of fingerprints, photographs and iris scans and the collection of such personal data by the 2nd Respondent for the UID scheme without any legislative authority or safeguards against misuse amounts to a clear violation of the right to privacy

of all the residents of the country.

(ix) BECAUSE in the case of *Selvi and Ors. v. State of Karnataka* (2010) 7 SCC 263, the Hon'ble Supreme Court emphasized the importance of giving up information voluntarily and held that making a person give up information involuntarily was a violation of their right to life and liberty guaranteed under the Constitution of India. The Supreme Court went on to state that every person is entitled to their mental privacy, and extracting information involuntarily is a violation of the same.

(x) BECAUSE the UID Scheme and the issuance of UID number results in excessive intrusion into the personal lives of the residents. The very fact that the Respondent No.2 intends to facilitate linkages with several schemes and provides a database that connects with every other database pertaining to an individual, creates compulsory access to personal data, thereby perpetuating undue Government surveillance and breach of a residents' right to live with dignity, which is an integral part of the right to life guaranteed under Article 21 of the Indian Constitution. There is absolutely no justifiable state interest that could

allow such gross transgression into the private rights of a citizen and thus the UID scheme deserves to be set aside.

The Hon'ble Supreme Court in the case of *Govind v. State of Madhya Pradesh* (1975) 2 SCC 148 held: *"Hence, assuming that the right to personal liberty, the right to move freely throughout India and the freedom of speech create an independent fundamental right of privacy as an emanation from them it could not be absolute. It must be subject to restriction on the basis of compelling public interest. But the law infringing it must satisfy the compelling state interest*

test." In the instant case, there is no compelling state interest to violate the right to privacy of residents by taking their personal identifying information, in the absence of any legislative framework, and thus deserves to be set aside.

- (xi) BECAUSE the Hon'ble High Court of Delhi held in the case of *Naz Foundation v. Government of NCT and Others* 2010 Cri.L.J. 94 that: *"At its least, it is clear that the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals as members of our society. It recognises a person as a free being who develops his or her body and mind as he or she sees fit. At the root of the*

dignity is the autonomy of the private will and a person's freedom of choice and of action. Human dignity rests on recognition of the physical and spiritual integrity of the human being, his or her humanity, and his value as a person, irrespective of the utility he can provide to others".

Thus, it is submitted that the protection of the right to dignity is closely related to and dependent on the right to privacy guaranteed under Article 21 of the constitution.

(xii) BECAUSE the Hon'ble Supreme Court has held in the case of *Kharak Singh v. State of Punjab* (1964) 1 SCR 332 that where there is no force of law enacted by the State, executive instructions cannot be classified as a "procedure established by law" under Article 21. Similarly in *Bennett Coleman and Co. v. Union of India* (1972) 2 SCC 788 the Hon'ble Supreme Court held that executive action taken in detriment to the fundamental rights guaranteed by the Constitution cannot be authorized even during a period of emergency. The Apex Court also held in *Maneka Gandhi v. Union of India* 1978 SCR (2) 621 that not only should there be a procedure established by law for the curtailment of fundamental rights but such procedure ought to be fair and proper. The executive order passed by the UIDAI cannot be

classified as a "procedure established by law" as it does not have the force of law enacted by the State in addition to not satisfying the requirements of being fair and proper.

(xiii) BECAUSE even the Report of the Parliamentary Standing Committee on the NIAI Bill 2010 clearly stated in that the Aadhaar / UID scheme should not have been implemented without the parent legislation in place and without any national data protection laws being enacted, as there was no statutory authority for the 2nd Respondent UIDAI to collect personal data from residents, and there were serious lacunae in the safety of such data to protect it from misuse and abuse.

(xiv) BECAUSE under Article 17 of the International Covenant on Civil and Political Rights which has been signed and ratified by India, *"No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attack on his honour or reputation."* Thus, there can be no interference with the privacy rights of any person by the Respondents which includes the taking of a person's personal identifying information, without any statutory or legal backing laying down the authority and safeguards for collecting such

information.

(xv) BECAUSE under General Comment No. 16 on the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, issued under Article 17 of the International Covenant on the Civil and Political Rights, which India has ratified, states explicitly in Paragraph 10 that, *"The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant."* Thus, the 1st Respondent Union of India, is bound by its ratification of the ICCPR to ensure that no personal information of its residents is collected without legislative regulation and in the instant case, under the UID scheme the 2nd Respondent has been collecting personal biometric data of residents without even the NIAI Bill 2010 being passed or any other data protection law, in complete violation of India's international law obligations to protect

the right to privacy and dignity of its citizens and residents.

(xvi) BECAUSE the German Federal Constitutional Court adopted a similar approach in the *Census Act Case* (BVerfG 15 December 1983, BVerfGE 65, 1, 43). This case involved a challenge to the National Census Act 1983, which placed an obligation on every household to fill in and return a census form for the collection of statistical data. There the Court held that the protection of 'informational self-determination' fell within the ambit of the 'right to the free development of one's personality' under article 2(1) of the German Constitution. It held that "*Individual self-determination, however, presupposes – even under the conditions of modern information processing techniques – that the individual has the freedom to decide whether to perform or omit actions, including the possibility of acting according to this decision. A person who cannot safely tell what information about him regarding certain areas is known to his social environment, and cannot to some extent assess the knowledge of potential partners of communication, can be essentially inhibited in his freedom to make autonomous plans and decisions. ... It follows that the free development of one's personality under the*

modern conditions of data processing presupposes the protection of the individual against unlimited collection, storage, use and transmission of his personal data."

- (xvii) BECAUSE several jurisdictions around the world wherein similar projects have been proposed have taken note of the strong opposition and criticism thereof, on account of it being violative of the right to privacy. The UK government has scrapped its Identity Cards Act, 2006, while the French Constitutional Court has found that the law proposing the introduction of a new biometric ID for French citizens to be unconstitutional. In a 2012 decision, the French Constitutional Court, the *Conseil Constitutionnel*, Décision n° 2012-652 DC du 22 mars 2012, affirmed held that biometric data constitutes 'personal data' and that the right to respect for private life under the French Constitution requires that: *"[T]he collection, registration, conservation, consultation and communication of personal data must be justified on grounds of general interest and implemented in an adequate manner, proportionate to this objective."* Most importantly the Philippines Supreme Court quashed the Administrative order No. 308, which sought to collect personal data and biometric information, on the

grounds of it being highly intrusive into the Rights of Privacy of a citizen. Similarly, the Israeli Government which is facing immense opposition to its plan to introduce national Biometric IDs has decided to implement a pilot project first, a measure which ought to have been implemented in India as well, before spearheading the scheme nationwide.

(xviii) On these and other grounds that the Petitioners seek liberty to raise, it is prayed that this petition is allowed

PRAYER

Wherefore, in light of the above facts and grounds it is prayed that this Hon'ble Court may be pleased to:-

A. Declare the UID Notification as *ultra vires* of the Article 21 of the Constitution of India and issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to desist from collecting any personal and biometric information;

B. Issue a writ of mandamus directing the destruction of all the personal and biometric data collected by the Respondents pursuant to the UID project; and

C. Pending disposal of the present petition, the implementation of the UID project be stayed:

D. Pass any such further order or other orders as this Hon'ble Court may deem fit and proper in the interest of justice and equity.

INTERIM RELIEF

Pending disposal of the present petition, the acquisition/possession of a UID or Aadhaar Card would not be made mandatory for access to any State provided service/facility and pass any such further order or other orders as this Hon'ble Court may deem fit and proper in the interest of justice and equity;

Dated: July, 2013

J. Sai Deepak

Place: New Delhi

Advocate for the Petitioners

B-72, Second Floor,

Sector 23, Noida-201301

//TRUE TYPED COPY//

ANNEXURE A-5

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 4996/2013

BEGHAR FOUNDATION and ANR.

... Petitioners

Through: Mr. Saikrishna Rajagopal, Adv. With Mr. J. Sai Deepak, Ms.
Julien George, Mr. Arjun Ranganathan, Advs.

Versus

UNION OF INDIA and ORS.

... Respondents

Through: Mr. Saqib, Adv. For R-1/UOI

Mr. Anuj Aggarwal, Adv. For R-2

Ms. Zubeda Begum, Adv. For R-3

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

07.08.2013

C.M. No.11278/2013 (exemption)

Exemption is allowed subject to all just exceptions.

W.P.(C) No. 4996/2013

Issue Notice. Notice is accepted by the learned counsel appearing for the respondents. The counter affidavits be filed within six weeks and the rejoinder affidavits, if necessary be filed within two weeks thereafter.

Re-notify on 06.11.2013.

BADAR DURREZ AHMED, ACJ

VIBHU BAKHRU, J

AUGUST 07, 2013

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ANNEXURE A-6

ITEM NO.5+56

Court No.5

SECTION PIL

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 494 OF 2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for stay)

WITH T.P.(C) NO. 47-48 of 2013

(With appln(s) for stay and office report)

(Appln. for deletion of the name of petitioner no. 1)

T.P.(C) NO. 476 of 2013

(With appln(s) for stay and office report)

W.P.(C) No. 829 of 2013

(With appln(s) for interim relief and office report)

Date: 23/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Anil B. Divan, Sr. Adv.
 Mr. Ankit Goel, Adv.
 Mr. Ranvir Singh, Adv.
 Mr. Sanjay Yadav, Adv.
 Mr. Anish Kumar Gupta, Adv.

Ms. Deepshikha Bhàrati, Adv.

Mr. S.S. Shamsbery, Adv.

Mr. Rajeev Kr. Singh, Adv.

Mr. Nachiketa Joshi, Adv.

Mr. P.R. Kovilan Poongkuntran

Mrs. Geetha Kovilan, Adv.

Mr. Shyam Divan, Sr. Adv.

Mr. Pratap Venugopal, Adv.

Ms. Meenakshi Chauhan, Adv.

Mr. Varun Singh, Adv.

Mr. Gaurav Nair, Adv..

for M/s. K.J. John & Co.

For Respondent(s) Mr. Mohan Parasaran, SG

Mr. L. Nageshwar Rao, ASG

Mr. Farrukh Rasheed, Adv.

Mr. Alok Mishra, Adv.

Mr. D.S. Mahra, Adv

UPON hearing counsel the Court made the following

ORDER

Issue notice in W.P.(C) No. 829/2013.

Application for deletion of the name of petitioner no. 1 in T.P.(C)

Nos. 47 of 2013 is allowed.

T.P.(C)nos. 47-48 of 2013 and T.P.(C) No. 476 of 2013 are allowed
in terms of the signed order.

All the matters require to be heard finally. List all matters for final
hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.

(DEEPAK MANSUKHANI)
Court Master

(M.S. NEGI)
Court Master

(Signed order is placed on the file)

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ANNEXURE A-7

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO(s). 47-48 OF 2013

THE GOVT. OF INDIA & ORS. ETC.

....Petitioner(s)

VERSUS

S. RAJU & ANR. ETC.

....Respondent(s)

WITH

TRANSFER PETITION(CIVIL) NO(s). 476 OF 2013.

ORDER

Heard learned counsel for the parties.

Having regard to the facts and circumstances of the case, we are satisfied that this is a fit case where the prayer for transfer is to be allowed.

On the facts of the case, we allow these Transfer Petitions and direct that W.P(C) No. 439 of 2012 titled S. Raju Vs. Govt. of India and Others pending before the D.B. of the High Court of Judicature at Madras and PIL No. 10 of 2012 titled Vickram Crishna and Others Vs. UIDAI and Others pending before the High Court of Judicature at Bombay be transferred to this Court. The Registry of the High Court of

Madras and Registry of the High Court of Bombay are requested to transmit the original records to this Court expeditiously.

These Transfer Petitions are accordingly allowed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(S.A. BOBDE)

NEW DELHI

SEPTEMBER 23, 2013

//TRUE TYPED COPY//

ANNEXURE A-8

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 4996/2013

BEGHAR FOUNDATION & ANR

..... Petitioners.

Through: Mr.. Julien George, Adv.

With Mr. Arjun Ranganathan, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Saqib, Adv.

With Mr. Anuj Aggarwal,

Mr. Gaurav Khanna, Adv. for R-1&2.

Ms. Zubeda Begum, Adv. for Govt. Of

NCT of Delhi [SDM (HQ)]

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

ORDER

% 6.11.2013

Learned counsel for the respondents have drawn the attention of this Court to the order of the Supreme Court dated 23rd September, 2013 passed in Transfer Petition (Civil) No. 47-48 of 2013. Since admittedly, the Supreme Court has transferred to itself a case raising an identical

issue, we see no reason to continue with present public interest litigation.

Accordingly, the petition is disposed of. However, the petitioner is at liberty to file an appropriate application before the Supreme Court in accordance with law.

CHIEF JUSTICE

NOVEMBER 06, 2013/ 'anb'

MANMOHAN, J

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Annexure-A-9:101



Request for Empanelment (RFE)

EMANELMENT OF ENROLLING AGENCIES

FOR UNDERTAKING DEMOGRAPHIC AND
BIOMETRIC DATA COLLECTION FOR UID
ENROLMENT

Unique Identification Authority of India (UIDAI)

11th May, 2011

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1. INVITATION FOR PROPOSAL

To,

Dated: 11.05.2011

1. Unique Identification Authority of India (UIDAI) invites requests for Empanelment of Enrolling Agencies (EA) for carrying out the enrolment functions for the Unique Identification (UID) project of Government of India. Existing empanelled Enrolment Agencies desirous of renewal and upgradation may also apply.
2. Private Companies, Government Companies, PSUs, Semi-Government Organizations, NGOs, Not-for-Profit Organizations, Microfinance institutions etc. are eligible to participate in this empanelment process
3. The Request for Empanelment (RFE) includes the following sections:
 - a. Invitation for Empanelment/re-empanelment
 - b. Scope of Work
 - c. Process for Empanelment/ re-empanelment
 - d. Application Form
 - e. Terms and Conditions for Empanelment/ re-empanelment
4. The "Request for Empanelment" is available on the website <http://uidai.gov.in/> for free download. A separate portal is being created for submission of the proposals on-line and the same will be made available by 20.5.2011. All interested parties are requested to submit their proposal on-line followed by a hard copy of same submitted by posts by 15.6.2011 with all supporting documents at the address for communication given below :
5. Address for Communication: Ms. K. Kipgen
Assistant Director General,
Unique Identification Authority of India (UIDAI),
Planning Commission, Govt. of India (Gol),
3rd Floor, Tower II, Jeevan Bharati Building,
Connaught Circus,
New Delhi - 110001.
Email ID: adg-ea@uidai.gov.in

6. Amendments in RFE: At any time prior to the deadline for submission of proposal, UIDAI may for any reason, modify the RFE. The modifications will be notified on UIDAI's website and such amendments shall be binding on the applicants.
7. The Director General, UIDAI reserves the right to accept/ reject any request and to annul the empanelment-process and reject all requests at any time prior to empanelment without, thereby, incurring any liability to the affected applicant(s) or UIDAI or any obligation to inform the affected applicant(s) of the ground for such decision.
8. Clarification on request Submitted: During evaluation, UIDAI may, at its discretion, ask the applicant(s) for clarification on their request. The applicant(s) are required to respond within the time frame prescribed by UIDAI.

Definitions and Acronyms

1. **AADHAAR** – Brand name associated with UIDAI.
2. **Authentication** – The process of verifying the UID number of a resident along with other attributes (including biometrics) with data or information available in the CIDR with respect to the Resident.
3. **Authority** – Unique Identification Authority of India (UIDAI).
4. **Biometric Data** – refers to the facial image, iris scan and fingerprints collected by the Enrolment Agency from the enrolees based on the standards prescribed by the UIDAI and by following the process laid down for the purpose. The data collected is passed on to the UIDAI as per the process prescribed.
5. **CIDR**: Central Identities Data Repository
6. **CSC** – Common Service Centres operating as franchisees of Service Center Agency (SCA) within a State, as part of the CSC Scheme of the National E-Governance Plan of India.
7. **DDSV** – Demographic Data Standards and Verification Procedure.
8. **De-duplication** – the process of using the Demographic and Biometric data collected from an enrolee to check against data so as to avoid duplicate enrolments.
9. **Demographic Data** – refers to the personal information collected or verified by the Enrolling Agency based on the data fields prescribed by the UIDAI and by following the process laid down for the purpose. The data collected is passed on to the UIDAI as per the process prescribed.
10. **DIT** – Department of Information Technology.
11. **Enhancement** – refers to request for upgradation of Technical & Financial status of existing empanelled Agencies based on their technical and financial capacities.
12. **Enrolling Agency/ Enrolment Agency** – The Agency appointed by the Registrar for collection of the Demographic and Biometric data in the area assigned by the Registrar.
13. **Enrolment** – refers to the exercise of collection of demographic data after verification, collection of biometrics, and the allocation of the UID number after de-duplication.
14. **Enrolment Centre** – refers to the premises located in the area where the enrolment is being carried out. One Enrolment Centre can host multiple Enrolment Stations.

15. **Enrolment Station** – refers to an individual enrolment booth/enclosure inside the Enrolment Centre. The capture of Demographic and Biometric data is done in this Station.
16. **KYC** – Know Your Customer.
17. **KYR** – Know Your Resident.
18. **KYR+** - details for Verification beyond identification (KYR)
19. **Financial Year** – From April 1st to March 31st .
20. **Manual** – Enrolment Manual.
21. **MoU** – Memorandum of Understanding.
22. **NGO** – Non Government Organization.
23. **NPR** – National Population register.
24. **Operator** – the person employed by the Enrolment Agency and engaged in the capture of Demographic and Biometric Data.
25. **ORGI** – Office of Registrar General of India.
26. **PoA** – Proof of Address.
27. **Pol** – Proof of Identity.
28. **Registrar** – The Agency of the Central or State Government or Local Government comprising the elected rural and urban local bodies Constitutional/ statutory Village Councils or a recognized Non-Governmental Organization with whom the UIDAI has entered into a Memorandum of Understanding for covering issues related to the implementation of the UID Project. Organisations such as LIC and Public Sector Banks can also be Registrars.
29. **Renewal**: Renewal of empanelment of existing empanelled EAs.
30. **Resident** – Normal resident of India.
31. **RFP** – Request for Proposal.
32. **UID** – Unique Identification.
33. **UIDAI** – Unique Identification Authority of India.
34. **UNICODE** – Globally accepted standard definition of local language characters in a computer system. Character sets defined by Unicode Consortium.
35. **UTF-8** – Unicode Transformation Format, most widely used storage encoding for any UNICODE data.

36. **VARCHAR** – Variable character string as represented in a database. Unlike the fixed size character type, VARCHAR does not store any blank characters at the end, reducing the size of a database when the full length of the field is not used.

2. INTRODUCTION

2.1 The Government of India (GoI) has embarked upon an ambitious initiative to provide Aadhaar Number, a Unique Identification (UID), to every resident of India and has constituted the Unique Identification Authority of India (UIDAI) for this purpose. The scale of the UID initiative is unprecedented and its implementation will involve active participation of Central, State, and Local Governments, as well as public and private sector agencies across the country. The UID has been envisioned as a means for residents to easily and effectively establish their identity, to any agency, anywhere in the country, without having to repeatedly produce identity documentation to agencies. The Aadhaar number would thus ensure that residents across India – including the poorest and the most marginalized – are not denied access to the benefits and services that are meant for them for lack of identity. More details on the UIDAI and the strategy overview can be found on the website: <http://www.uidai.gov.in>

2.2 The widespread implementation of the Aadhaar project needs the reach and flexibility to enroll residents across the country. To achieve this, the UIDAI proposes to collaborate with a variety of agencies and service providers (acting as Registrars, Sub-registrars and Enrolling Agencies) to enroll residents for Aadhaar.

2.3 In this context, the UIDAI plans to offer a scheme for empanelment of Enrolment agencies across the country for carrying out the various functions and activities related to Aadhaar enrolment. The enrolments will be done by the Enrolment Agency on behalf of the Registrar(s) but strictly in adherence to the processes, guidelines, instructions and software issued by UIDAI. The terms Enrolling Agency and Enrolment Agency used interchangeably hereafter mean the same. AADHAAR is the brand name associated with UIDAI and is synonymous with UID.

3. SCHEME FOR EMPANELMENT OF ENROLMENT AGENCIES

Through this scheme, UIDAI intends to empanel a mix of organizations to enroll residents from the entire spectrum of the Indian population and to ensure that the enrolment activities are rolled out in the remotest villages of India and to the marginalized section of society.

The RFE is open to all eligible organizations (including Govt / Semi-Govt/ Private / NGOs/ Not-for-Profit/ Microfinance Institutions), which are (i) registered and operating in India for the last three years and (ii) having an average annual turnover/grants-in-aid of at least INR 50 lacs in case of NGOs/ Not-for-Profit OR a Net Worth of at least INR 50 lacs in case of Commercial Organizations/ PSUs/ Govt. companies/ Autonomous bodies, in each of the last three (3) financial years (2008-09, 2009-10 & 2010-11).

Sub-Contracting of Enrolment Work is not allowed for private/ commercial Organizations/PSUs /Govt. Companies /Autonomous bodies. However Government Organizations may choose to franchise enrolment work to CSCs/ Local Government bodies.

4. MINIMUM ELIGIBILITY CRITERIA

4.1 A Single company/ organization (e.g. Govt./ Semi-Govt./ Private/ PSU/ NGO/ Not-for-Profit/ Microfinance Institution) or Consortium of companies/ organizations (maximum of 4 members) **registered in India and in existence for at least three(3) years as on 31.3.2011**, are eligible to submit proposals for empanelment for the project. In case of a Consortium, one of the members of the consortium should act as the Prime Agency and shall be solely responsible to the Registrar for executing the enrolment activities and contractual obligations, if selected for carrying out enrolment activities. The Prime Agency should submit the Request for Empanelment proposal on behalf of the Consortium.

4.2 The applicant (single agency/ all consortium members) must be **incorporated or registered in India under the Indian Companies Act, 1956 (including Section – 25 of the Act), the Partnership Act, 1932, Societies Registration Act 1860, the Indian Trusts Act 1882/ it's equivalent in the respective States OR must be Proprietorship entities having a PAN number.**

4.3 The applicant (single agency/ all consortium members)/NGO/Not for Profit

organization should have been in existence for a period of at least 3 years as of 31.3.2011. The applicant, except NGOs and Not for-profit organisations, should have been profitable in at least 2 (two) of the last 3 (three) Financial years, ie. 2008-09, 2009-10 and 2010-11 as declared by audited account / certified balance sheet of financial statement reported in India.

4.4 The applicant in case of Private/ PSU/ Govt. Company/ Commercial Organization/ Autonomous Body (single agency/ Prime Agency in case of a consortium) should have had a Net Worth of at least INR 50 lacs in each of the last three financial years ending 31st March 2009, 31st March 2010 and 31st March 2011 as evidenced by the audited accounts of the organization.

4.5 The applicant in case of NGOs/ Not-for-Profit organization (single agency/ Prime Agency in case of a consortium) should have had an average annual turnover/ grants-in-aid of at least INR 50 lacs in each of the last three financial years ending 31st March 2009, 31st March 2010 and 31st March 2011 as evidenced by the audited accounts. However, the NGO/ Not-for-Profit organization must be non-political and non-denominational organization with no affiliation to any political parties or religion.

4.6 The applicant (single agency/ consortium members) **should not have been blacklisted by Central, or any State/ UT Government. The applicant (single agency/ consortium members) shall not be under a declaration of ineligibility for corrupt financial practices.**

4.7 Only those applicants /existing EAs who meet the eligibility criteria specified above will be eligible to respond to this RFE. The applicant's request should be submitted online on the portal of UIDAI at www.uidai.gov.in and automatically generated printout should be annexed with the relevant information & supporting documents to substantiate the eligibility of the applicant vis-à-vis the pre-qualification criteria.

5. MANDATORY LIST OF DOCUMENTS TO BE SUBMITTED

5.1 Certificate of Incorporation from Registrar Of Companies (RoC) or Certificate of Registration/ Evidence of legal status of applicant (Single Agency/ all Consortium members).

5.2 Letter of Association in case of Consortium and certified true copy of the Consortium agreement between the Prime applicant and the other members of the consortium, describing the respective roles and responsibilities of all the members, in meeting the overall scope and requirements of the proposed Project.

5.3 Auditor certified financial statements for the financial years 2010-11, 2009-10 and 2008-09 (Please include the sections on P&L, Turnover, Assets and Balance Sheet) should be provided by all types of applicants. In case, the audited certified financial statements for the financial year 2010-11 is not available, an Auditor's certificate specifying the Net worth and Turnover/ Grants-in-aid of the organization as of 31.3.2011 should be provided for the same. Existing empanelled EAs should only submit accounts/Auditor's certificate for 2010-11.

5.4 Declaration from the Directors citing that the organization has not been blacklisted by Central/ State/ UT Government and has not been charged for any fraudulent activity and not be under a declaration of ineligibility for corrupt practices. The NGO/ Not-for-Profit organization must also provide declaration from the Directors citing that it is non-political and non-denominational organization with no affiliation to any political parties or religion.

5.5 Proof for Organization PAN Number, VAT/ Service Tax number.

5.6 Profile of the Organization giving relevant details of nature of work, experience, infrastructure, resources etc.

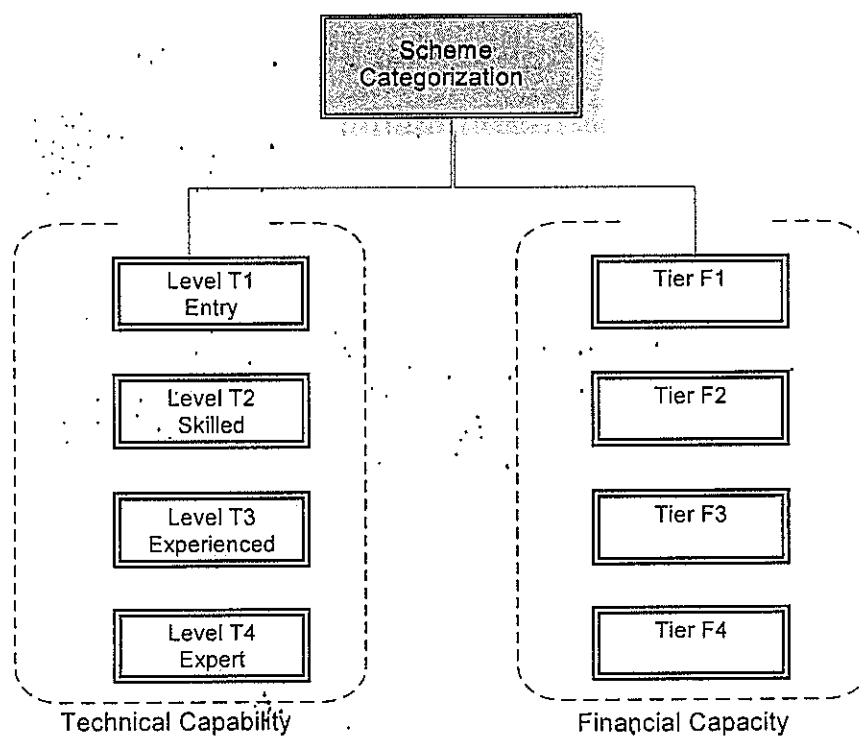
5.7 Certificate of Award of work from Registrar in case of existing empanelled EAs which are engaged in enrollment carried out by different Registrars for UIDAI together with Certificate of satisfactory performance of SLA from the Registrar concerned in case of EAs which have commenced

enrolments.

6. SCHEME OF CATEGORIZATION

The scheme aims to categorize enrolment agencies on the basis of their Technical Capability as well as Financial Capacity for undertaking enrolment functions. While the technical capability addresses the maturity of an organization to undertake enrolment functions in the Aadhaar landscape in terms of number of trained operators and experience in biometric enrolment, the financial capacity addresses the capacity of an organization to undertake enrolment activities in multiple States.

The Technical Capability of an organization shall be assessed at a 4-Level maturity continuum while the Financial Capacity shall be assessed based on a 4-Tier structure, as given below:



6.1 TECHNICAL CAPABILITY

The technical capability of an enrollment agency shall be assessed at 4 levels as given below:

I Level T1 – Entry:

All organizations (single agency/consortium) interested in undertaking enrolment activities for the UIDAI project shall be empanelled under Level T1, provided they meet the general eligibility criteria.

II Level T2 – Skilled:

Organizations (single agency/ consortium) can progress from Level T1 to Level T2 on employing 25 enrolment operators and other staff (supervisor/technical personnel) who are trained and certified in Aadhaar enrolment processes.

Alternatively, organizations (single agency/ consortium) which are already into the business of undertaking biometric enrolments can directly get empanelled into Level T2 provided the organization has completed 50,000 biometric enrolments in the last 3 financial years. Experienced organizations should provide client certifications to this effect as part of the Application Form and should satisfy all the general eligibility criteria.

Biometric enrollments in this case shall imply collection of fingerprints and/ or iris scan from people using specialized biometric capture devices with the purpose of enrolment/ registration for Government Schemes/ Identity-based Services offered by public or private entities.

III Level T3 – Experienced:

Organizations can get empanelled / progress to Level T3 on achieving the following:

a) Employing 75 enrolment operators and supervisors who are trained and certified in UIDAI enrolment processes

AND

b) Completing 10 Lac successful Aadhaar enrolments which has resulted in

issuance of Aadhaar numbers

IV Level T4 – Audited:

Organizations can progress from Level T3 to Level T4 based on successful completion of 'Level T4 Audit' by an auditing agency which will be empanelled by UIDAI. The audit shall cover adherence to enrolment processes, quality of enrolment data, percentage of successful enrolments, people aspects, and other enrolment related functions.

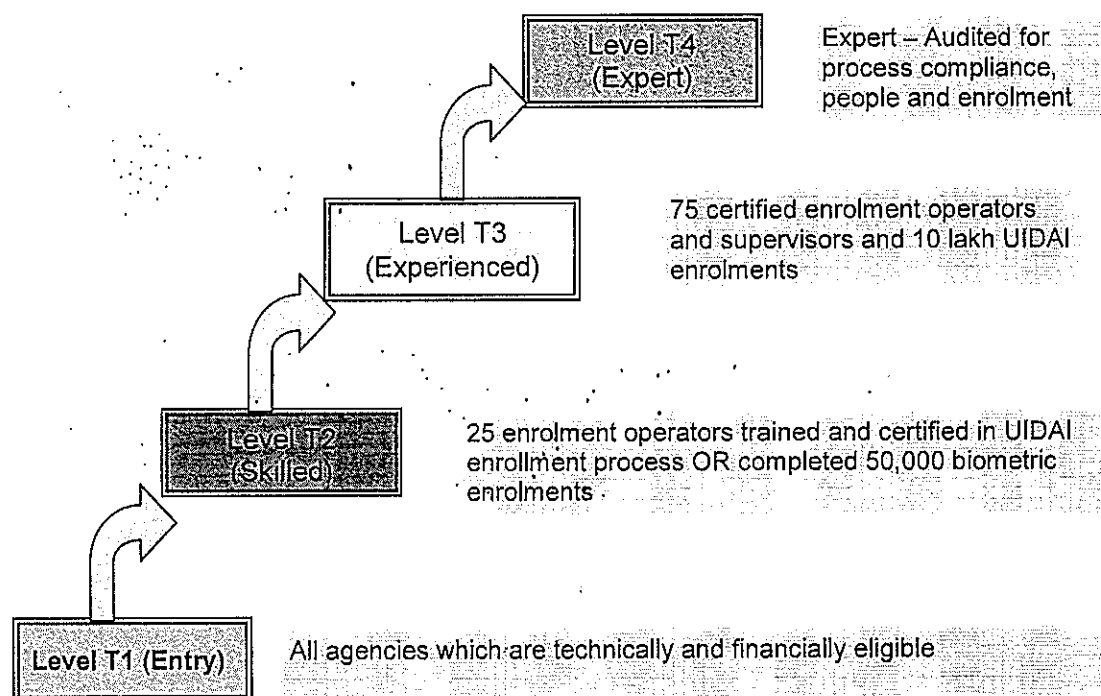


Fig. 1: Snapshot of Technical Capability Levels and Criteria

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Through this RFE, UIDAI invites Request for Empanelment from Organizations for either:

a) Level T1: For companies with no prior experience in biometric enrolments.

OR

b) Level T2: For companies with prior experience in completing 50,000 biometric (fingerprints and/ or iris only) enrolments.

c) Level T3: For companies with 75 certified enrolment operators/supervisors in UIDAI enrolment processes and 10 lakh successful UIDAI enrolments.

6.2 FINANCIAL CAPACITY

I. Tier F1:

- a. Commercial Organizations (Single Agency/ Prime Agency in case of a consortium) which have a Net worth between INR 50 Lacs and not exceeding INR 2 Crores as of 31.3.2011 shall be eligible for 'Tier F1' empanelment.
- b. NGOs/ Not-for-Profit Organizations which have an annual turnover/ Grants-in-aid between INR 50 Lacs and not exceeding INR 2 Crores as of 31.3.2011 shall be eligible for 'Tier F1' empanelment.
- c. Organizations which are eligible for empanelment under Tier F1 can evince interest in undertaking enrolment work in a **maximum** of 2 States/ UTs. Tier F1 organizations can take up a **maximum** enrolment of 15 Lacs Aadhaar Enrolments in a year.

II. Tier F2:

- a. Commercial Organizations (Single Agency/ Prime Agency in case of a consortium) which have a Net worth above INR 2 Crores and not exceeding INR 5 Crores as of 31.3.2011 shall be eligible for 'Tier F2' empanelment.

- b. NGOs/ Not-for-Profit Organizations which have an annual turnover/ Grants-in-aid above INR 2 Crores and not exceeding INR 5 Crores as of 31.3.2011 shall be eligible for 'Tier F2' empanelment.
- c. Organizations which are eligible for empanelment under Tier F2 can evince interest in undertaking enrolment work in a **maximum** of 4 States/ UTs. Tier F2 organizations can take up a **maximum** enrolment of 35 Lac Aadhaar Enrolments in a year.

III Tier F3:

- a. Commercial Organizations (Single Agency/ Prime Agency in case of a consortium) which have a Net worth above INR 5 Crores and not exceeding INR 20 Crores as of 31.3.2011 shall be eligible for 'Tier F3' empanelment.
- b. NGOs/ Not-for-Profit Organizations which have an annual turnover/ Grants-in-aid above INR 10 Crores and not exceeding INR 20 Crores as of 31.3.2011 shall be eligible for 'Tier F3' empanelment.
- c. Organizations which are eligible for empanelment under Tier F3 can evince interest in undertaking enrolment work in a **maximum** of 8 States/ UTs. Tier F3 organizations can take up a **maximum** enrolment of 125 Lakh Aadhaar Enrolments in a year.

IV Tier F4:

- a. Commercial Organizations (Single Agency/ Prime Agency in case of a consortium) which have a Net Worth greater than Rs 20 Crores as of 31.3.2011 shall be eligible for 'Tier F4' empanelment.
- b. NGOs/ Not-for-Profit Organizations which have an annual turnover/ Grants-in-aid greater than INR 20 Crore in each of the previous three financial years (2009-10 and 2010-11) shall be eligible for 'Tier F4' empanelment.
- c. Organizations which are eligible for empanelment under Tier F4 can evince interest in undertaking enrolment work in **any number** of States /UTs of their

choice. Tier F4 organizations can take up a **maximum** enrolment of 500 Lac Aadhaar Enrolments in a year.

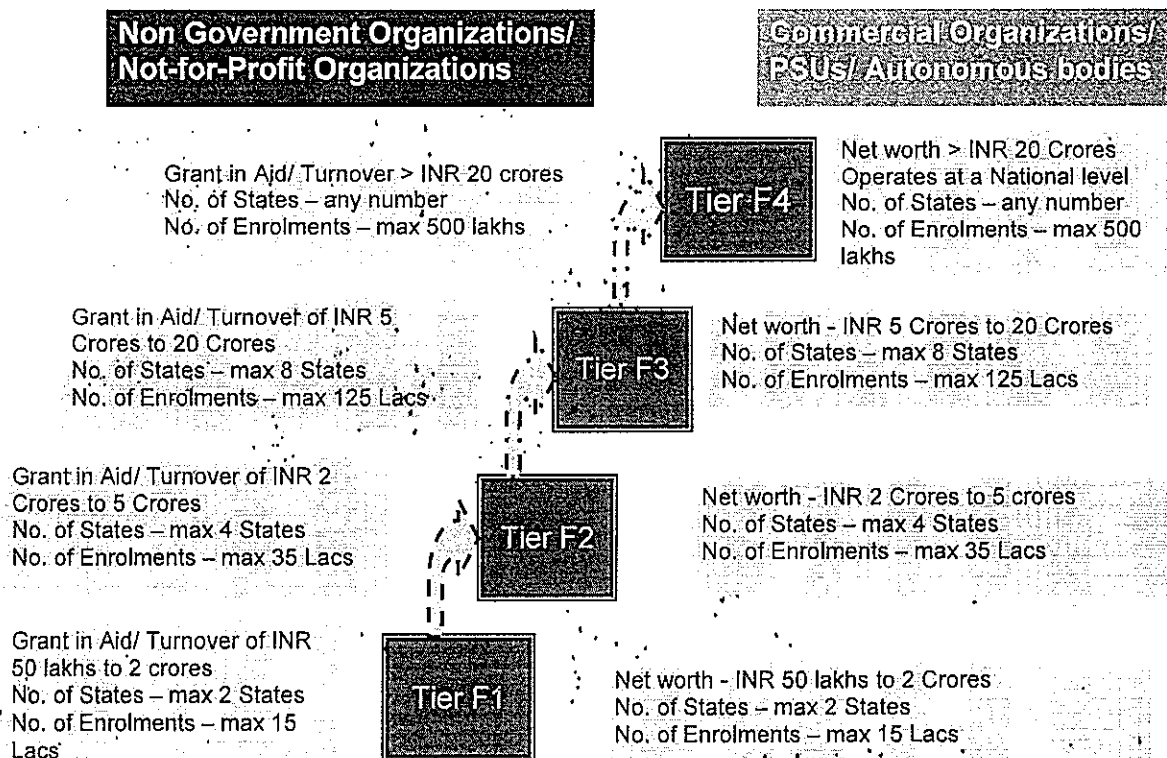


Fig 2: Snapshot of Financial Capacity Tiers and Bid Capacity in terms of maximum number of States and maximum number of Aadhaar enrolments in a year

7. SALIENT POINT FOR EMPANELMENT

- a) Applicants shall select between Level T1 and Level T2 based on its technical capability
- b) Applicants shall select between Tier F1 to Tier F4 based on the financial capacity of the Applicant (single agency/ prime agency in case of consortium) and shall accordingly mention the names of the States/UTs in which the Applicants is interested in undertaking enrolment work in the Application Form.

In case the applicant evinces interest in more number of States/UTs than what the applicant is eligible for, under the Tier the applicant falls under,

- (i) the first eight States/UTs cited shall be considered for Tier F3 applicants
 - (ii) the first four States/UTs cited shall be considered for Tier F2 applicants and
 - (iii) The first two States/UTs cited shall be considered for Tier F1 applicants.
- c) **It may be noted that evincing interest in a particular State does not in any way guarantee the allocation of enrolment work in that State either in part or in whole. The discretion of work allocation within a State lies solely with the respective Registrar.**
 - d) Consortium partners experience shall be evaluated only for assessment of Technical Capability and shall not be considered for assessment of Financial Capacity of the applicant.

8. SCOPE OF WORK

The scope of work of the Enrolling Agency (EA) includes the following:

8.1 Procure enrolment hardware, software including Biometric Devices as per UIDAI Specifications

The enrolling agency should procure enrolment hardware, software including certified biometric devices (for fingerprint and iris capture), used for capture of biometric data at the enrolling station, which conform to UIDAI specifications. Biometric Devices should only be procured if they are certified by UIDAI or its duly authorized agency.

8.2 Setting up of Enrolment Stations and Enrolment Centre

8.2.1 The number of enrolment stations/ centers and the duration shall be decided by the enrolment agency and approved by Registrar taking into account a number of factors like population density, geographical and topographical features, accessibility etc. No enrolment centre and station shall be made operational without the approval and knowledge of the Registrar.

8.2.2 Enrolment Centers must be set up at convenient and central locations that are easily approachable. Enrolment Centre premises must be neat and clean, hygienic, well maintained and safe from electric/fire hazards.

8.2.3 Set up **Help Desk** to facilitate crowd and time management and address residents' queries.

8.2.4 Display basic enrolment centre information (Hindi/local language/English) as given below:

- (i) Name of Registrar and Contact Number
- (ii) Name of EA & Contact Number
- (iii) Working hours
- (iv) Holidays
- (v) Help Line Number: 1800 180 1947

***Do not leave the centre without your acknowledgement receipt.**

*(For details pertaining to the requirements of centre and station setup, please refer to the resident enrolment process document version 1.2 and **Dos and Don'ts** circulated vide OM no. 4(4)/57/01/enrolment process/2010-UIDAI dated 29.3.2011) available at www.uidai.gov.in.*

8.3 Hire & Train Manpower for Enrolment

8.3.1 Hiring Manpower:

The Enrolling Agency shall hire manpower to operate the enrolment station/center as per the guidelines prescribed by UIDAI.

- a) Operator:** The enrolling agency shall hire manpower (operator) to execute enrolment at the enrolment stations as per the criteria provided below:
- i. The operator should be of age 18 yrs and above.
 - ii. The operator shall be 10+2 pass/graduate
 - iii. The operator should have a basic understanding of operating a computer and should be comfortable using the computer.
 - iv. The operator should have undergone training on the various equipment and gadgets as specified in above clauses. The operator should have been enrolled for aadhaar and also aadhaar number should have been generated.
 - v. The operator should have undergone training for UID enrolment and obtained certificate from a testing and certifying agency authorized by UIDAI.
 - vi. The Operator should have received his/her Aadhaar number and activated in accordance with UIDAI guidelines prior to commencing enrolments.

- b) Supervisor:** The enrolling agency shall hire Supervisors to supervise enrolment at the enrolment centers as per the criteria provided below:

- i. The supervisor should be age of 18 and above.
- ii. The supervisor shall preferably be a graduate
- iii. The supervisor shall have a good understanding and experience in using a computer.

- iv. The Supervisor should have passed the Supervisor test and certified by a testing and certifying agency authorized by UIDAI.
- v. The Supervisor should have received his/her Aadhaar number and activated in accordance with UIDAI guidelines prior to commencing enrolments.

c) **Technical personnel:** The enrolling agency shall hire Technical personnel to provide technical support during enrolment at the enrolment centers as per the criteria provided below:

- i. The Technical personnel shall be a Graduate and have a certification/experience on hardware/software trouble shooting and maintenance
- ii. The Technical personnel shall have a good understanding and experience in using a computer.
- iii. The Technical personnel should have undergone training on the various equipment and gadgets as specified in above clause..

d) **Induction training:** After hiring the personnel as described above, the personnel should be given mandatory induction training on the various activities involved in the enrolment process to enable them to understand and adjust to the local situation. The mandatory induction training shall be compulsory before deployment of the personnel. The period of induction training shall be from 6 to 8 days. The EA will inform concerned RO Regional Offices of UIDAI prior to training schedule and will also give a follow-up report.

It is advised that staff EA wears uniform at enrolment centre so that if residents need help they can easily identify employees by their attire. All field operators deployed for collecting pre-enrolment data must carry identity. EA must ensure compliance to Labour laws and all statutory provisions in various Labour regulations that is PF, ESI Industrial Disputes Act, Contract Labour Act, Minimum Wages etc.

8.3.2 Training of Manpower:

The EA shall be responsible for training of its enrollment personnel as per the training content and methodology prescribed by the UIDAI. In this process, EAs may opt for engaging specialized training agencies (those who have been empanelled with UIDAI) for providing training to its enrollment personnel. However the enrolling agencies may also train their own manpower subject to certain conditions as prescribed below.

- i. The enrollment agency may prefer to have master trainers onboard. Master trainers shall be identified by the enrollment agency from its pool of trainers and get them trained by UIDAI/ its representative as per its schedule. Master trainers shall train the trainers.
- ii. The enrollment agency shall have the requisite number of trainers for training its personnel. Trainers have to be trained by the Master trainers and should have passed the certification exam. Master trainers and trainers are needed for continuous training in view of software upgradation/modification in process.
- iii. The training and enrolment operations shall be separate activities.
- iv. Duration of the training will vary depending on the category/ level of the participant.
- v. The enrolling agency involved in training shall translate the training material into local language and hand it over to the course participants.
- vi. The enrollment agency shall ensure the availability of the requisite infrastructure for imparting training which shall include
 - a. Availability of at least two sets of the equipment and gadgets
 - b. Certified trainers

-
- vii. The size of a batch for training shall not exceed 20 per batch.
 - viii. The training schedule and contents for training shall be defined by UIDAI/its representative
 - ix. The manpower trained by the Enrolling Agency shall be considered qualified only after passing the Certifying test conducted by a Testing and Certifying Agency authorized by UIDAI. Therefore the enrolment agency shall coordinate with the testing agency for testing and certifying its trainees.
 - x. The agency shall be subject to process audits for training from time to time by UIDAI/ its representative.

(For details please refer to the Training document version 1.2 available at www.uidai.gov.in).

8.4 Conduct Enrolment Operations as per Standard Processes specified by UIDAI

Prior to the commencement of the Enrolment operations the Enrolment Agency shall work closely with the local governing bodies, key introducers in publicizing the Aadhaar, its importance and schedule for Aadhaar registration in that location. During the enrolment operation publicity and awareness shall also be done by the enrolment agency in coordination with the local authorities to encourage Aadhaar registrations. All content for such publicity shall be provided by UIDAI/approved by UIDAI.

The enrolment agencies will use the latest client software prepared and released by UIDAI for the collection of demographic and biometric data from time to time. All UIDAI defined processes are available on the UIDAI portal and applicants are strongly encouraged to familiarize themselves with these processes before applying. *(For details please refer to the Resident Enrolment Process Document & Information and Communication Document version 1.2 available at www.uidai.gov.in).*

8.5 Process for transfer of Data to UIDAI

The data collected at the time of enrolment will be transferred to UIDAI for storage in Central Identities Data Repository (CIDR) as per the prescribed format as per the resident enrolment process document. For details, refer to the said document which is available on the UIDAI website.

8.6 Privacy & Security

Enrolling agencies are responsible to make sure that the data is kept in a very secure and confidential manner and under no circumstances, shall they neither use the data themselves nor part with the data to any other agency other than the UIDAI. Mechanisms to ensure the same have to be put in place by the Enrolling agency and shall be subject to audit by UIDAI/its representative from time to time. The EAs must familiarize themselves and strictly adhere and comply with the data security guidelines issued by UIDAI from time to time.

8.7 Provide Electronic MIS Reports on Enrolment Status Daily

Enrolment Agencies shall send enrollment statistics on enrolment status to Registrar/UIDAI on a daily basis as prescribed in the process document.

8.8 Data Management System

The Enrolment Agencies are expected to collect hard copies of documents, consent and enrolment forms from residents. Records must be indexed and stored in such a way that they are retrievable, accessible and safeguarded against environmental damage till the time they are submitted to Registrar/UIDAI. The enrolment agency must maintain a list of the documents collected and submitted, for the purpose of reconciliation and future reference.

9. PROCESS OF EMPANELMENT

9.1 How to Apply for Empanelment with UIDAI

UIDAI will publish this document on their website <http://uidai.gov.in/> for the benefit of interested parties to empanel with UIDAI. The following is a description of the procedure for submission of application:

- a) Interested parties are required to read the document completely to ascertain that they fulfill all the eligibility criteria. They are also advised to go through various process documents available on UIDAI website.
- b) Fill the Application Form online completely as given in UIDAI portal. (Please see Annexure II); applications with incomplete/ ambiguous information and lacking supporting documents will be rejected and no correspondence will be entertained in this regard.
- c) The Proposal and all associated correspondence shall be written in English and shall conform to prescribed formats. Any interlineations, erasures or over writings shall be valid only if they are initialed by the authorized person signing the Proposal.
- d) Please write 'APPLICATION FOR EMPANELMENT/RENEWAL AS WELL AS ENHANCEMENT OF ENROLMENT AGENCIES' and the name of the applicant on the outer envelope.
- e) Hard copy of downloaded application with empanelment fees in the form of Demand draft and necessary supporting documents as well as 1CD of the hard copy should be submitted to **Ms. K. Kipgen, Assistant Director General, UIDAI Office, Planning Commission, Govt. of India (Gol), 2nd Floor, Tower I, Jeevan Bharati Building, Connaught Circus, New Delhi – 110001** on or before **15.6.2011 - 3 p.m.**

9.2 Pre- Application Queries

Prospective applicants, requiring any clarification on the RFE may post their queries on-line by 31.5.2011. UIDAI shall attempt to provide responses to all such queries on-line within 5 working days. However, if the applicant's queries are not addressed on-line, the same can be sent to the following email ID < adg-ea@uidai.gov.in >.

*** The empanelment shall be done at periodic intervals as decided by UIDAI.**

Levels for empanelment are as defined in Section 6 of this document. Level T1, T2 and T3 are open empanelment. However, upgradation to level T4 will only be after completion of third party audit process.

9.3 Renewal of Empanelment

Those EAs who are already empanelled with UIDAI and desirous of renewing their empanelment with UIDAI may submit following information along with supporting documents wherever necessary along with the application-

A. Empanelled agencies who did not get any work orders:

- (i) Name of States/UTs for which they were eligible to undertake work as per terms and conditions of empanelment but the Company did not submit bids, giving reasons.
- (ii) Name of States/UTs for which they are eligible and wherein the Company submitted bids vis-à-vis their financial categorization (F1, F2, F3 and F4).
- (iii) Work order received but cancelled later on.

B. Empanelled agencies who received work orders:

- (i) Certificate of satisfactory performance/ adherence to SLA etc. from their Registrars.
- (ii) Copy of Work Order/Letter of Intent

9.4 Fees for Request for Empanelment

The RFE is available to be downloaded online, free of cost. However at the time of submission of RFE, applicants are required to pay INR 10000/- towards Request for Empanelment Fees in the form of Demand Draft drawn in favor of "PAO, UIDAI, New Delhi" payable at New Delhi. This RFE Fees should be included along with the Application in a separate cover and this fee is Non-Refundable.

Those EAs who are already empanelled with UIDAI and desirous of renewing their empanelment with UIDAI may submit their request in the prescribed proforma (Annexure-II) along with a fee of INR 2500/- drawn in favour of PAO, UIDAI, New Delhi.

The empanelment shall be valid for a period of one year subject to compliance of all requirements. After one year, the Enrollment agency shall pay a fee of INR 2500/- for renewal of empanelment at the time of next RFE.

"The selected applicants shall be required to furnish an unconditional and irrevocable bank guarantee equivalent to INR 200000/-, from a scheduled commercial bank in India valid for the entire period of empanelment. The Bank Guarantee shall be drawn in favour of PAO, UIDAI, New Delhi. The Bank Guarantee should be submitted within 30 days of the date of communication of the award and acceptance of the empanelment as Enrolment Agency with UIDAI."

9.5 List of Document to be submitted as part of Proposal

- a. Application Form as given in Annexure II along with the covering letter in Annexure-I of this RFE and all associated supporting documents.
- b. All mandatory documents as given in Section 5 of this RFE.
- c. Fees for Request for Empanelment/Renewal /Enhancement (in separate envelopes).

Applications which do not contain the above may be rejected for non-compliance of RFE requirements.

9.6 Evaluation for Empanelment based on Technical Capability

The process of evaluation for Empanelment of Enrolling Agencies shall be as given below:

9.6.1 Evaluation for Empanelment at Level T1

Evaluation for empanelment at Level T1 involves the assessment of the applicant organization through documentary evidence for its nature of business, stated competence, financial turnover and organization background and its suitability for UIDAI enrolment activities. This stage of evaluation requires:

- a) Application in prescribed format, given at Annexure II
- b) Demand Draft of Request for Empanelment Fees along with the Application
- c) Registration details of the organization
- d) Brief write-up on organization's activities, nature of business, locations, number

of employees

- e) Annual turnover/grants in aid details & supporting documents for last three financial years and Net worth as of 31.3.2011
- f) PAN number and VAT/Service Tax number proof verification
- g) States/ UTs in which the applicant is interested to work
- h) Details as in points c,d,e and f above of each Consortium Members, incase of a consortium bid

UIDAI shall also conduct a background check of the applicant and shall have the complete right to disqualify a applicant, in case the information provided by the applicant is found to be incorrect.

9.6.2 Evaluation for Empanelment at Level T2

For applicants having prior biometric enrolment experience, the Work Experience certificate/ Client Certificate containing clear information on the number of biometric (Fingerprint and/or Iris only) enrolments which have been successfully completed, should be provided.

For progressing from Level T1 to Level T2, the Enrolment Agency should submit the information on the name, EA code and the number of Enrolment operators and supervisors employed by the agency, which have been trained and certified in the UIDAI enrolment process. UIDAI shall verify these details with the information generated by the Management Information System (MIS) on certification. On successful verification, the Enrolment Agency shall be elevated to Level T2 status.

Further, the applicant has to satisfy the General Eligibility Criteria and submit all the mandatory list of documents. UIDAI, upon successful verification and evaluation of these details, shall consider empanelling the applicant at Level T2.

9.6.3 Evaluation for Empanelment at Level T3

For progressing to Level T3, the Enrolment Agency should submit the information on the name, EA code and the number of Enrolment operators and supervisors who

have been trained and certified in the UIDAI enrolment process. Further, the Enrolment Agency should also provide details on the successful UIDAI enrolments (which have resulted in issuance of UID numbers) in the format which would be communicated by UIDAI. UIDAI shall verify these details with the information generated by the Management Information System (MIS). On successful verification, UIDAI shall consider empanelling the Enrolment Agency at Level T3.

9.6.4 Evaluation for Empanelment at Level T4

For progressing from Level T3 to Level T4, the Enrolment Agency shall engage an Auditing Agency empanelled by UIDAI to perform a complete audit of the enrolment process, qualification of the enrolment operators employed by the agency, quality of biometric data captured etc. Upon successful completion of the audit and receipt of the Audit Report, UIDAI shall empanel the Enrolment Agency at Level T4.

9.7 Evaluation for Empanelment based on Financial Capacity

The Enrolment Agencies shall be empanelled under Tier F1, Tier F2, Tier F3 or Tier F4 based on the Net Worth (for Commercial Organizations) as on 31.3.2011 OR Annual Turnover/ Grants-in-Aid (for NGOs/ Not-for-Profit Organizations) as on 31.3.2011. Empanelled Enrolment Agencies may progress to a higher tier during the next round of empanelment/renewal of empanelment.

9.8 Award of Empanelment

After scrutinizing the complete details, UIDAI will empanel the applicants indicating the level of technical capability, States/UTs in which to undertake enrollment work, and bid capacity. The empanelled agencies will be issued a letter of empanelment which will also include the terms and conditions of the empanelment.

9.9 Disqualifications

UIDAI may at its sole discretion and at any time during the evaluation of proposal, disqualify any application received for empanelment, if the applicant has:

- (a) Submitted the application after the response deadline;
- (b) Made misleading or false representations in the forms, statements and

attachments submitted in proof of the eligibility requirements.

- (c) Exhibited a record of poor performance such as abandoning works, not properly completing the contractual obligations, inordinately delaying completion or financial failures, etc. in any project in the preceding three years.
- (d) Submitted a proposal that is not accompanied by required documentation or is non-responsive.
- (e) Submitted more than one proposal.
- (f) Failed to provide clarifications related thereto, when sought;
- (g) Prosecuted for corrupt and fraudulent practices in any court of law.
- (h) Blacklisted by any Government of India / State / UT Government or declared ineligible by the Govt of India/State/UT Govt for corrupt and forwarded practices
- (i) Any litigation with any Government (Central/State/UT) in India;
- (j) Agencies already undertaking other work in respect of other UIDAI related project will not be eligible for empanelment as Enrolment Agency or vice versa.
- (k) Not adhered to UIDAI prescribed processes, instructions, guidelines, in case of already empanelled agencies.

9.10 Termination or cessation of Empanelment

- a. Without prejudice to any other right or remedy it may have, either party may terminate this Agreement at any time by giving one month advance notice in writing to the other party.
- b. UIDAI reserves the right to withdraw/ terminate empanelment of applicant in any of following circumstances:
 - 1. Applicant becomes insolvent, bankrupt, resolution is passed for the winding up of the applicant's organization
 - 2. Information provided to UIDAI is found to be incorrect;
 - 3. Empanelment conditions are not met within the specified time period;
 - 4. Significant changes to the organization or in the course being conducted are not notified to UIDAI;
 - 5. Non co-operation during audits by UIDAI/Registrars/auditing agencies empanelled/ appointed by these
 - 6. Misleading claims about the empanelment status are made;

7. Clear evidence is received that empanelled agency is in breach of copyright;
8. Non-compliance to SLAs and penalties imposed
9. Non-adherence to the UIDAI enrolment processes and guidelines
10. Poor quality of biometrics and demographics data
11. Poor performance reports
12. Usage of biometric devices which are not approved by UIDAI
13. Deploying Enrolment Operators/supervisors who are neither enrolled nor certified
14. Mismanagement of the enrolment centers
15. Not maintaining the confidentiality of the documents, data collected, any other
16. Non-provision of necessary infrastructure at the enrolment centers
17. Undertaking enrolment operations at locations without valid agreement with the Registrars
18. Soliciting information outside the scope of work
19. Any other reasons deemed fit by UIDAI

10. POST EMPANELMENT PROCESS AND AWARD OF WORK

Compilation of Database of Empanelled Enrolling Agencies

- (i) Upon completion of the RFE process, UIDAI will intimate successful applicants. The successful Applicants will have to submit the Bank Guarantee, as prescribed by UIDAI, within 15 days of Letter of Intent.
- (ii) The UIDAI will compile a database of all the eligible and qualified Enrolling Agencies (EA) and categorize them as per the Level and Tier classification described above.
- (iii) The UIDAI will make available the database of all empanelled enrolling agencies (as per the indicative format and details shown above) to Registrars who wish to engage enrolling agencies for UID enrolment work. Using the above information, Registrars will be able to access details of the technical capability (Levels T1 to T4) and bid capacity (Tiers F1 to F4) for the enrolling

agencies.

- (iv) The information contained in this database shall be subject to revision at frequent intervals based on updated information provided by EAs, Registrars, and information obtained from the UID Management Information System (MIS).
- (v) The procedures and guidelines for the availability, access, maintenance, and usage of the empanelment information database shall be laid down by the UIDAI in due course of time.

11. AWARD OF ENROLMENT WORK TO EMPANELLED EAs

- (i) Registrars may choose to identify prospective EAs from the empanelled list based on the level-tier classification, and invite a limited tender for Request for Quotation (RFQ) calling for commercial quotes to undertake the Aadhaar enrolment work in specified locations. Registrars may also choose to modify the scope of work for the EA, based on the specific enrolment requirements of the Registrar.
- (ii) Alternatively, Registrars may also opt for issuing a separate Request for Proposal (RFP), based on a model RFP template provided by UIDAI, and invite fresh bids from interested parties. **The RFP in such a case may not be limited to the empanelled EAs.**
- (iii) In either of the above cases, selected EA(s) will be required to sign a contract agreement with the Registrar for undertaking enrolment work in specified locations.
- (iv) EAs will not be required to sign any contract with UIDAI, either upon empanelment or award of work from a Registrar. However, EAs shall ensure strict compliance with all UIDAI processes, guidelines and instructions.

12. GENERAL TERMS AND CONDITIONS

The following terms and conditions are of a general nature, and are given here only for the information of the prospective enrolling agencies. Every project and assignment shall be awarded subject to the specific terms and conditions applicable to that project which will be imposed through specific contracts and agreements to

be signed for that project. UIDAI will not sign any contract directly with the empanelled enrolling agencies.

12.1 Nativity: The organization must be registered and audited statement must be declared in India.

12.2 Relationship:

Nothing mentioned herein shall be construed as relationship of master and servant or of principal and agent as between the 'UIDAI and 'the applicant. No partnership shall be constituted between UIDAI and the applicant by virtue of this Empanelment nor shall either party have powers to make, vary or release contractual obligations on behalf of the other party or represent that by virtue of this or any other Empanelment a partnership has been constituted, or that it has any such power. The applicants shall be fully responsible for the services performed by them or on their behalf.

Neither party shall use the other parties name or any service or proprietary name, mark or logo of the other party for advertising or promotional purpose without first having obtained the other party's prior written approval.

12.3 Right to accept the application: UIDAI reserves the right to accept or reject any request for empanelment and to annul the empanelment process and reject all such requests at any time prior to empanelment, without thereby incurring any liability to the affected applicant(s) or any obligation to inform the affected applicant(s) of the grounds for such decision.

12.4 No obligation: Empanelment with UIDAI does not guarantee that any or all applicants shall be invited to bid for, or be awarded any project / assignment as a result of this empanelment.

12.5 Performance Assessment: EA's performance will be assessed during the execution of the project / assignment and any deficiencies and short-falls will be dealt with in accordance of the contract terms associated with the project / assignment and may also lead to termination/withdrawal of empanelment.

12.6 Fraud and Corruption: UIDAI requires that the enrolment agencies empanelled through this process must observe the highest standards of ethics

during the performance and execution of the awarded contract(s). The following terms apply in this context:

12.6.1 UIDAI will reject the application for empanelment, if the applicant recommended for empanelment, has been determined by UIDAI to having been engaged in corrupt, fraudulent, unfair trade practices, coercive or collusive.

These terms are defined as follows:

- (a) "Corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of UIDAI or any personnel in contract executions.
- (b) "Fraudulent practice" means a misrepresentation of facts, in order to influence a procurement process or the execution of a contract, to UIDAI, and includes collusive practice among applicants (prior to or after Proposal submission) designed to establish proposal prices at artificially high or non-competitive levels and to deprive UIDAI of the benefits of free and open competition.
- (c) "Unfair trade practices" means supply of services different from what is ordered on, or change in the Scope of Work which was agreed to.
- (d) "Coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution of contract.
- (e) "Collusive practices" means a scheme or arrangement between two or more applicants with or without the knowledge of the UIDAI, designed to establish prices at artificial, noncompetitive levels;
- (d) UIDAI will reject an application for award, if it determines that the applicant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, unfair trade, coercive or collusive practices in competing for the contract in question.

12.6.2 Confidentiality: Information relating to evaluation of application and recommendations concerning awards shall not be disclosed to the applicants who submitted the applications or to other persons not officially concerned with the process. The undue use by any applicant of confidential information related to the process may result in the rejection of his application.

12.7 Governing Language: All contracts and documents shall be written in English

Language.

12.8 Applicable Law: Applicable Law means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time.

12.9 Legal Jurisdiction: The interpretation validity, and performance of this document, shall be governed in all respects in accordance with the Indian Laws. All legal disputes between the parties shall be subject to the jurisdiction of the Courts situated in Delhi only.

12.10 Duration of Empanelment: The empanelment under the scheme shall be renewed annually on payment of a renewal fee unless and until the enrolment agency is de-empanelled on account of poor performance, non-adherence to UIDAI enrolment processes, consistent bad quality of biometric data capture etc. as evidenced from audit reports.

12.11 Frequency of Empanelment Process: UIDAI shall open the empanelment process every six months or as determined adequate by UIDAI so as to include new players and exclude those whose performance is not satisfactory. The performance shall be based on the periodic audit process to be done by UIDAI authorized audit agencies.

12.12 Advertising and Promotion: The advertisement and marketing material (posts, marketing brochure content on the website, emails and postal letters etc.) used by the enrolling agencies shall be in accordance with the guidelines laid down by UIDAI. The enrolling agencies shall not use the Name of UIDAI, its brand name - AADHAAR, and its Logo, to promote their interest in any manner in any programme not connected / related or being undertaken for UIDAI.

12.13 Enrolment guidelines: UIDAI has the discretion to change the prescribed procedure for enrolment, setting up of enrolment station/ centre and the staffing of the enrolment stations/centres without prior notice.

12.14 Indemnity: The applicants will indemnify UIDAI against any misuse of UIDAI

Name, Brand Name - AADHAAR and Logo. For any misuse of UIDAI name and logo, the applicant themselves will be held responsible. UIDAI will take necessary actions for such cases. UIDAI will not be responsible for any miscommunication or harm caused to any party because of any misrepresentation of its name and logo by the applicant.

12.15 Termination / Withdrawal:

- c. Without prejudice to any other right or remedy it may have, either party may terminate this Agreement at any time by giving one month advance notice in writing to the other party.
- d. UIDAI reserves the right to withdraw/ terminate empanelment of applicant in any of following circumstances:
 - i. Applicant becomes insolvent, bankrupt, resolution is passed for the winding up of the applicant's organization
 - ii. Information provided to UIDAI is found to be incorrect;
 - iii. Empanelment conditions are not met within the specified time period;
 - iv. Significant changes to the organization or in the course being conducted are not notified to UIDAI;
 - v. Non co-operation during audits by UIDAI/Registrars/auditing agencies empanelled/ appointed by these
 - vi. Misleading claims about the empanelment status are made;
 - vii. Clear evidence is received that empanelled agency is in breach of copyright;
 - viii. Non-compliance to SLAs and penalties imposed
 - ix. Non-adherence to the UIDAI enrolment processes and guidelines
 - x. Poor quality of biometrics and demographics data
 - xi. Poor performance reports of enrolment centres
 - xii. Usage of biometric devices which are not approved by UIDAI
 - xiii. Deploying Enrolment Operators/supervisors who are neither enrolled nor certified
 - xiv. Mismanagement of the enrolment centers
 - xv. Not maintaining the confidentiality of the documents, data collected, any other
 - xvi. Non-provision of necessary infrastructure at the enrolment centers

- xvii. Undertaking enrolment operations at locations without valid agreement with the Registrars
- xviii. Soliciting information outside the scope of work
- xix. Any other reasons deemed fit by UIDAI

12.16 Conflict of Interest: UIDAI requires that empanelled enrolment agencies shall provide professional and objective services and at all times hold the UIDAI's interests paramount, strictly avoid conflicts of interest with other assignments or their own corporate interests and act without any consideration for future work.

Without limitation on the generality of the foregoing, applicants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be empanelled, under any of the circumstances set forth below:

(i) **Conflicting relationships:** An applicant (including its Personnel and Sub-Agencies) that has a business or family relationship with a member of the UIDAI's staff who is directly or indirectly involved in any part of:

(a) The preparation of the Terms of Reference of the project/ assignment,

(b) The selection process for such project / assignment

(ii) Applicants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the UIDAI, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Agency or the termination of its Empanelment.

(iii) Applicants shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this application and during execution of the assignment if the applicant is awarded the Empanelment.

(iv) The empanelled enrolling agencies will not be eligible to participate or under-take any activities related to the Testing and Certification or Audit work component of UID project.

12.17 Only one application: An applicant may only submit one proposal on its own. If an applicant submits more than one proposal on its own, such proposals shall be disqualified.

12.18 Amendment: At any time prior to deadline for submission of applications, UIDAI may for any reason, modify this document. The amendment document shall be notified through website and such amendments shall be binding on all applicants.

12.19 Disqualification: UIDAI may at its sole discretion and at any time during the evaluation of application, disqualify any applicant, if the applicant:

- (i) Submitted the application after the response deadline;
- (ii) Made misleading or false representations in the forms, statements and attachments submitted in proof of the eligibility requirements;
- (iii) Exhibited a record of poor performance such as abandoning works, not properly completing the contractual obligations, inordinately delaying completion or financial failures, etc. in any project in the preceding three years;
- (iv) Submitted an application that is not accompanied by required documentation or is non-responsive;
- (v) Failed to provide clarifications related thereto, when sought;
- (vi) Submitted more than one application on its own;
- (vii) Was declared ineligible/blacklisted by the Government of India/State/UT Government;
- (viii) Should not be in litigation with any Government(Central/state/UT) in India;

12.20 Right to Inspect and Audit: UIDAI shall have the right to:

- (i) Carry out any inspection, background checks, audits of the empanelled enrolling agencies
- (ii) Verify any allegations made by/ made against the enrolling agencies
- (iii) Carry out scheduled/ un-scheduled visits to any of the enrolment centres/ stations manned by the enrolling agencies by authorized officials/ nominated agencies

-
- (iv) Oversee the processes and operations of the enrolling agencies
-

12.21 Disclaimer:

- (i) This Request for Empanelment (RFE) is not an offer by the UIDAI, but an invitation to receive responses from eligible interested applicants for Empanelment of Enrolling Agencies to undertake demographic and biometric data collection for UID enrollment. UIDAI will empanel such applicants who fulfill the eligibility criteria for awarding such work by various Registrars. No contractual obligation whatsoever shall arise from the RFE process.
- (ii) The RFE evaluation shall be strictly based on the information and supporting documents provided by the applicants in the application submitted by them. It is the responsibility of the applicants to provide all supporting documents necessary to fulfill the mandatory eligibility criteria. In case, information required by UIDAI is not provided by applicant, UIDAI shall proceed with evaluation based on information provided and shall not request the applicant for further information. Hence, responsibility for providing information as required in this form lies solely with applicant.

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13. Annexure I – Covering Letter

(To be submitted on the Letter head of the applicant)

To,

The Assistant Director General,

Unique Identification Authority of India (UIDAI),

Planning Commission, Govt. of India (GoI),

3rd Floor, Tower II, Jeevan Bharati Building,

Connaught Circus, New Delhi – 110001.

Dear Madam,

Ref: Request for Empanelment (RFE) Notification No. A11016/133/2011-EA (UIDAI)
dated _____

1. Having examined the RFE document, we, the undersigned, herewith submit our response to your RFE Notification dated 11/05/2010 for Empanelment of Enrolling Agencies under UID Project, in full conformity with the said RFE document. (in case of consortium, the names of the consortium partners shall be provided here)
2. We have read the provisions of the RFE document, the various process documents referred to in this RFE and familiarized ourselves with them, and confirm that these are acceptable to us. We further declare that additional conditions, variations, deviations, if any, found in our RFE shall not be given effect to.
3. We agree to abide by this RFE, consisting of this letter, the detailed response to the RFE and all attachments, for a period of 60 days from the closing date fixed for submission of proposal as stipulated in the RFE document.
4. We would like to declare that we are not involved in any litigation with any Government in India and we are not under a declaration of ineligibility for corrupt or fraudulent practices.
5. We hereby declare that we have not been blacklisted by any Central/ State/ UT Government.
6. We hereby declare that we have not been charged with any fraudulent activities by any Central/ State/ UT Government.
7. We hereby declare that we are a non-political and non-denominational organization with no affiliation to any political parties or religion (Applicable to NGOs and Not-for-profit organisations).
8. We hereby declare that all the information and statements made in this RFE are true

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and accept that any misrepresentation contained in it may lead to our disqualification.

9. We understood that UIDAI is not bound to short-list / accept any proposal received in response to this RFE.
10. We understood that Empanelment with UIDAI does not guarantee that every / any of the applicants shall be invited to bid for, or be awarded a project / assignment.
11. In case we are empanelled as an Enrolling Agency, we shall provide all assistance/cooperation required by UIDAI appointed auditing agencies/ UIDAI officials for performing their auditing and inspection functions. We understand that our non-cooperation for the same shall be grounds for termination of empanelment.
12. In case we are empanelled as an Enrolling Agency, we agree to abide by all the terms & conditions of the Letter of Empanelment that will be issued by UIDAI.

We hereby declare that our proposal submitted in response to this RFE is made in good faith and the information contained is true and correct to the best of our knowledge and belief.

Sincerely,

[Applicant's Name with seal]

Name:

Title:

Signature:

Date:

14. Annexure-II – Application Form for EMPANELMENT

Sl.No	Information required	Information to be provided by applicants
1.	Whether for Empanelment/Renewal	
2.	Is it Single Agency Bid OR Consortium Bid:	
3.	Name of Single Agency/ Prime Agency (in case of Consortium):	
3	In case of Consortium Bid, name of Consortium Members: a. b. c.	
4	Legal Status of Single Agency/ Prime Agency: a. Whether Government/ Semi-Government/ PSU/ NGO/ Not for Profit/ Private etc.: b. PAN number of the Organization c. VAT/Service Tax Registration number of the Organization (Provide these above details for each consortium member, in case of a consortium bid)	
5	Date of Incorporation of Single Applicant/ Consortium/team members:	
6	Brief Write-up on the Organization's activities and Business Areas in case of Private/ Commercial Organization/ PSU/ Govt. Company/ Autonomous Body (include details on each consortium member, in case	

	of consortium bid):	
7	<p>In case of NGO/ Not for Profit, please provide the following information (include details of each consortium member also separately):</p> <p>a) Principal field(s) of activity/operation</p> <p>b) Principal sources of funding</p> <p>c) Managing Committee/ Governing Body/ Office Bearers</p>	
8	Name of Contact Person, Designation, Address, Email & Phone /FAX numbers to whom all references shall be made regarding this RFE.	
9a	In case of renewal, brief details of the contract signed with the Registrar /activities undertaken for UIDAI exercise. (Annex copy of work order/letter of intent)	
9b	Give reasons, if any, for non-participation in RFQ floated by Registrars	
9c	In case of renewal whether certificate of satisfactory performance from Registrars is submitted by EA.	

12	<p>Net Worth of the Single Agency/ Prime Agency in each of the previous three financial years ending 31st March 2009, 31st March 2010 and 31st March 2011, in case of a Private/ Commercial organization/ PSU/ Govt. Company/ Autonomous Body, duly certified by the Company Auditor (do not include intangible assets)</p> <p>Existing empanelled EAs should only submit accounts/Auditor's certificate for 2010-11</p>	Assets in INR Lakhs		Liabilities in INR Lakhs									
		Current Assets		Short term liabilities									
		Fixed Assets		Long term liabilities									
		Long term investments											
		Total Assets (A)		Total Liabilities (B)									
		Total Net Worth as of (A-B)											
13	<p>Turnover of Single Agency/ Prime Agency in each of the previous three financial years ending 31st March 2009, 31st March 2010 and 31st March 2011, in case of Private/ Commercial organization/ PSU/ Govt. Company/ Autonomous Body, duly certified by the Auditor and as evidenced from the provided Financial.</p> <p>Existing empanelled EAs should only submit accounts/Auditor's certificate for 2010-11</p>	<table border="1"> <thead> <tr> <th data-bbox="787 1169 1096 1276">Financial Year</th><th data-bbox="1112 1169 1421 1276">Turnover in INR Lakhs</th></tr> </thead> <tbody> <tr> <td data-bbox="787 1276 1096 1370">2008-09</td><td data-bbox="1112 1276 1421 1370"></td></tr> <tr> <td data-bbox="787 1370 1096 1464">2009-10</td><td data-bbox="1112 1370 1421 1464"></td></tr> <tr> <td data-bbox="787 1464 1096 1585">2010-11</td><td data-bbox="1112 1464 1421 1585"></td></tr> </tbody> </table>				Financial Year	Turnover in INR Lakhs	2008-09		2009-10		2010-11	
Financial Year	Turnover in INR Lakhs												
2008-09													
2009-10													
2010-11													
14	<p>Turnover/ Grants in Aid of Single Agency/ Prime Agency in each of the previous three financial years ending 31st March 2009, 31st March 2010 and 31st March 2011, in case of NGO/ Not-for-Profit, duly certified by the Auditor</p>	Financial Year	Turnover in INR Lakhs	Grants-in-Aid in INR Lakhs									
		2008-09											
		2009-10											
		2010-11											
15	Locations where the												

	organization and consortium members has offices:	
16	Number of Employees of organization and consortium members:	
17	<p>In case of Organization that wish to empanel directly into Level T2/T3 number of successful biometric enrolments (fingerprint and/or Iris capture only) completed in last 3 financial years:</p> <p>(Please note that Client certifications are mandatory for considering this aspect and should be provided without fail. The kind of biometrics captured and the Project under which the enrolment was done should be mentioned clearly in the client certification)</p>	
18	<p>Names of States/ UTs in which the Agency is interested to undertake enrolment work:</p> <p>(This information is mandatory. Please note that the number of the States/ UTs provided here should match with the Tier F1, Tier F2, Tier F3 and Tier F4 specifications given for assessment of financial capacity i.e. in terms of number of States)</p>	

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Request for Empanelment of Enrolment Agencies

A-11016/133/2011-EA/UIDAI

I/We hereby declare that our request, in response to this RFE, is made in good faith and the information contained is true and correct to the best of our knowledge and belief.

Sincerely,

[Applicant's Name with seal]

Signature:

Place

Name:

Dated

Designation:

The applicant should submit information in the above format and should mandatorily provide all supporting documents as mentioned in the application form in hard copies and should send them at the following address:

Ms. K. kipgen

Assistant Director General,

Unique Identification Authority of India (UIDAI),

Planning Commission, Govt. of India (Gol),

3rd Floor, Tower II, Jeevan Bharati Building,

Connaught Circus, New Delhi – 110001.

Email ID : adg-ea@uidai.gov.in

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15. Annexure-III – Letter of Bank Guarantee

Dear Sirs,

Guarantee No. _____

Amount of Guarantee _____

Guarantee cover from _____

Last date for lodgment of claim _____

This Deed of guarantee executed by the(name of Bank) having its Central Office at and amongst other places, a Branch at _____

(hereinafter referred to as 'the Bank') in favour of _____

(hereinafter referred to as 'the Beneficiary ') for an amount not exceeding Rs _____ (Rupees _____

_____) at the request of _____

(hereinafter referred to as 'the Contractor/s').

This Guarantee is issued subject to the condition that the liability of the Bank under this Guarantee is limited to a maximum of Rs. _____

(Rupees _____) and the

Guarantee shall remain in full force up to _____ (Date of expiry) and

cannot be invoked otherwise than by a written demand or claim under this Guarantee served

on the Bank on or before the _____ (last date of the claim)

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BANK GUARANTEE

To
(name and address of purchaser)

Dear Sir,

BANK GUARANTEE

WHEREAS

.....(Company name), a company registered under the Companies Act, 1956 having its registered and corporate office at, hereinafter referred to as "our constituent", Which expression, unless excluded or repugnant to the context or meaning thereof, includes its successors and assigns), agreed to enter into a Contract dated (Herein after, referred to as "contract") with (name of the purchaser) as detailed in the said contract.

We are aware of the fact that as per the terms of the Contract,(Company name) is required to furnish an unconditional and irrevocable Bank Guarantee in your favour for an amount INR (in words) and guarantee the due by our constituent as per the Contract and do hereby agree and undertake to pay any and all amount due and payable under this bank guarantee, as security against breach / default of the said Contract by our Constituent. In Consideration of the fact that our constituent is our valued customer and the fact that he has entered into the said Contract with you, we (Name and Branch of Bank) have agreed to issue this Bank Guarantee.

Therefore, we (Name and Branch of Bank) hereby unconditionally and irrevocably guarantee you as under:

In the event of our constituent committing any breach/default of the said Contract, and which has not been rectified by him, we hereby agree to pay you forthwith on demand such sum/s not exceeding the sum of INR (Amount in words) without any demur.

Notwithstanding anything to the contrary, as contained in the said Contract, we agree that your decision as to whether our constituent has made any such default(s) / breach(es), as aforesaid and the amount or amounts to which you are entitled by reasons thereof, subject to the terms and conditions of the said Contract, will be binding on us and we shall not be

Request for Empanelment of Enrolment Agencies

A-11016/133/2011-EA/UIDAI

entitled to ask you to establish your claim or claims under this Bank Guarantee, but will pay the same forthwith on your demand without any protest or demur.

This Bank Guarantee shall continue and hold good till date subject to the terms and conditions in the said Contract.

We bind ourselves to pay the above said amount at any point of time commencing from the date of the said Contract to date _____ as per said Contract.

We further agree that the termination of the said Agreement, for reasons solely attributable to our constituent, virtually empowers you to demand for the payment of the above said amount under this guarantee and we would honor the same without demur.

We hereby expressly waive all our rights:

- (i) Requiring beneficiary to pursue legal remedies against(Company name) for notice of acceptance hereof any action taken or omitted in reliance hereon, of any defaults under the Contract and any resentment, demand, protest or any notice of any kind.

We the Guarantor, as primary obligor and not merely Surety or Guarantor of collection, do hereby irrevocably and unconditionally give our guarantee and undertake to pay any amount you may claim (by one or more claims) up to but not exceeding the amount mentioned aforesaid during the period from and including the date of issue of this guarantee through the period.

We specifically confirm that no proof of any amount due to you under the Contract is required to be provided to us in connection with any demand by you for payment under this guarantee other than your written demand.

Any notice by way of demand or otherwise hereunder may be sent by special courier, telex, fax, registered post or other electronic media to our address, as aforesaid and if sent by post, it shall be deemed to have been given to us after the expiry of 48 hours when the same has been posted.

If it is necessary to extend this guarantee on account of any reason whatsoever, we undertake to extend the period of this guarantee on the request of our constituent under intimation to you.

This Bank Guarantee shall not be affected by any change in the constitution of our constituent nor shall it be affected by any change in our constitution or by any amalgamation or absorption thereof or therewith or reconstruction or winding up, but will ensure to the benefit of you and be available to and be enforceable by you during the period from and including the date of issue of this guarantee through the period.

Notwithstanding anything contained herein above, our liability under this Bank Guarantee is restricted to INR(Amount in words) and shall continue to exist, subject to the terms and conditions contained herein, unless a written claim is lodged on us on or before the aforesaid date of expiry of this guarantee.

We hereby confirm that we have the Power/s to issue this Guarantee in your favour under the Memorandum and Articles of Association/Constitution of our bank and the undersigned is/are the recipient of authority by express delegation of power/s and has/have full power/s to execute this guarantee under the power of Attorney issued by the bank in your favour.

We further agree that the exercise of any of your rights against our constituent to enforce or forbear to enforce or any other indulgence or facility, extended to our constituent to carry out the contractual obligations as per the said Contract, would not release our liability under this guarantee and that your right against us shall remain in full force and effect, Notwithstanding any arrangement that may be entered into between you and our Constituent, during the entire currency of this guarantee.

Any payment made hereunder shall be free and clear of and without deduction for or on account of taxes, levies, imports, charges, duties, fees, deductions or withholding of any nature imposts.

Request for Empanelment of Enrolment Agencies

A-11016/133/2011-EA/UIDAI

This Bank Guarantee must be returned to the bank upon its expiry. If the bank does not receive the Bank Guarantee within the above-mentioned period, subject to the terms and conditions contained herein, it shall be deemed to be automatically cancelled.

This guarantee shall be governed by and construed in accordance with the Indian Laws and we hereby submit to the exclusive jurisdiction of courts of Justice in India for the purpose of any suit or action or other proceedings arising out of this guarantee or the subject-matter hereof brought by you may not be enforce in or by such court.

Notwithstanding anything contained herein:

Our liability under this Bank Guarantee shall not exceed INR(Amount in words).

This Bank Guarantee shall be valid only up to _____(date)

We are liable to pay the guaranteed amount or part thereof under this Bank Guarantee only and only if we receive a written claim or demand on or before _____(date).

Dated _____ this _____ day _____ 2008

Yours faithfully,

For and on behalf of the _____ Bank,

(Signature)

Designation
(Address of the Bank)

Note: This guarantee will attract stamp duty as a security bond.

A duly certified copy of the requisite authority conferred on the official/s to execute the guarantee on behalf of the bank should be annexed to this guarantee for verification and retention thereof as documentary evidence.

Annexure-10-152

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STANDING COMMITTEE ON FINANCE
(2011-12)

FIFTEENTH, LOK SABHA

Ministry of Planning

THE NATIONAL IDENTIFICATION AUTHORITY OF INDIA
BILL, 2010

FORTY-SECOND REPORT



LOK SABHA SECRETARIAT
NEW DELHI

December, 2011/ Agrahyana, 1933 (Saka)

FORTY-SECOND REPORT
STANDING COMMITTEE ON FINANCE
(2011-2012)
(FIFTEENTH LOK SABHA)

Ministry of Planning

**THE NATIONAL IDENTIFICATION AUTHORITY OF
INDIA BILL, 2010**

Presented to Lok Sabha on 13 December, 2011

Laid in Rajya Sabha on 13 December, 2011



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2011/ Agrahyana, 1933 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2011-2012**Shri Yashwant Sinha - Chairman****MEMBERS****LOK SABHA**

2. Shri Shivkumar Udasī Chanabasappa
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

RAJYA SABHA

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Yogendra P. Trivedi

SECRETARIAT

- | | | |
|---------------------------------|---|------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri R.K. Jain | - | Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |

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INTRODUCTION

1. I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Forty-Second Report on "The National Identification Authority of India Bill, 2010".

2. The National Identification Authority of India Bill, 2010 introduced in Rajya Sabha on 3 December, 2010 was referred to the Committee on 10 December, 2010 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained background note, detailed note and written information on various provisions contained in the aforesaid Bill from the Ministry of Planning.

4. Written suggestions / views / memoranda on the provisions of the Bill were received from various institutions / experts / individuals.

5. The Committee took briefing / oral evidence of the representatives of the Ministry of Planning and the Unique Identification Authority of India (UIDAI) at their sitting held on 11 February, 2011.

6. At the sitting held on 29 June, 2011, the Committee heard the views of the representatives of (i) the National Human Rights Commission (NHRC), and (ii) the Indian Banks Association (IBA), and Dr. Reetika Khera, Visitor, Delhi School of Economics, New Delhi. The Committee also heard the views of the representatives of the Confederation of Indian Industry (CII), and experts namely, Dr. Usha Ramanathan, Independent Law Researcher, New Delhi, Dr. R. Ramakumar, Associate Professor, the Tata Institute of Social Sciences, Mumbai and Shri Gopal Krishna, Member, Citizen Forum for Liberties, New Delhi at the sitting held on 29 July, 2011.

7. The Committee, at their sitting held on 8 December, 2011 considered and adopted this Report.

8. The Committee wish to express their thanks to the officials of the Ministry of Planning and the Unique Identification Authority of India (UIDAI) for furnishing the requisite material and information which were desired in connection with the examination of the Bill. The Committee would also thank all the institutions and experts for their valuable suggestions on the Bill.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi;
9 December, 2011
20 Aghrayana, 1933(Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance

REPORT**PART - I****A. Introduction**

1. With a view to ensure that the benefits of centrally sponsored schemes reaches to right person and not misused, the Central Government had decided to issue unique identification numbers to all residents in India and to certain other persons. The scheme of unique identification involves collection of demographic and biometric information from individuals for the purpose of issuing of unique identification numbers to such individuals. The Central Government, for the purpose of issuing unique identification numbers, constituted the Unique Identification Authority of India (UIDAI) on 28th January, 2009, being executive in nature, which is at present functioning under the Planning Commission.

2. It has been observed and assessed by the Government that the issue of unique identification numbers may involve certain issues, such as (a) security and confidentiality of information, imposition of obligation of disclosure of information so collected in certain cases, (b) impersonation by certain individuals at the time of enrolment for issue of unique identification numbers, (c) unauthorised access to the Central Identities Data Repository (CIDR), (d) manipulation of biometric information, (e) investigation of certain acts constituting offence, and (f) unauthorised disclosure of the information collected for the purpose of issue of unique identification numbers, which should be addressed by law and attract penalties.

3. In view of the foregoing paragraph, the Government has felt it necessary to make the said Authority as a statutory authority for carrying out the functions of issuing unique identification numbers to the residents in India and to certain other persons in an effective manner. It is, therefore, proposed to enact the National Identification Authority of India Bill, 2010 to provide for the establishment of the National Identification Authority of India (NIDAI) for the purpose of issuing identification numbers (which has been referred to as aadhaar number) to individuals residing in India and to certain other classes of individuals and manner of authentication of such individuals to facilitate access

to benefits and services, to which they are entitled and for matters connected therewith or incidental thereto.

B. Objectives and Salient Features of the Bill

4. The National Identification Authority of India Bill, 2010, introduced in Rajya Sabha on 3rd December, 2010, *inter alia*, seeks to provide—

(a) for issue of aadhaar numbers to every resident by the Authority on providing his demographic and biometric information to it in such manner as may be specified by regulations;

(b) for authentication of the aadhaar number of an aadhaar number holder in relation to his demographic and biometric information subject to such conditions and on payment of such fees as may be specified by regulations;

(c) for establishment of the National Identification Authority of India consisting of a Chairperson and two part-time Members;

(d) that the Authority to exercise powers and discharge functions which, *inter alia*, include—

(i) specifying the demographic and biometric information for enrolment for an aadhaar number and the processes for collection and verification thereof;

(ii) collecting demographic and biometric information from any individual seeking an aadhaar number in such manner as may be specified by regulations;

(iii) maintaining and updating the information of individuals in the CIDR in such manner as may be specified by regulations;

(iv) specify the usage and applicability of the aadhaar number for delivery of various benefits and services as may be provided by regulations;

(e) that the Authority shall not require any individual to give information pertaining to his race, religion, caste, tribe, ethnicity, language, income or health;

(f) that the Authority may engage one or more entities to establish and maintain the CIDR and to perform any other functions as may be specified by regulations;

(g) for constitution of the Identity Review Committee consisting of three members (one of whom shall be the chairperson) to ascertain the extent and pattern of usage of the aadhaar numbers across the country and prepare a report annually in relation to the extent and pattern of usage

of the aadhaar numbers along with its recommendations thereon and submit the same to the Central Government;

(h) that the Authority shall take measures (including security safeguards) to ensure that the information in the possession or control of the Authority (including information stored in the CIDR) is secured and protected against any loss or unauthorized access or use or unauthorized disclosure thereof; and

(i) for offences and penalties for contravention of the provisions of the proposed legislation.

C. Evolution of the UIDAI

5. The concept of a Unique Identification (UID) scheme was first discussed and worked upon since 2006 when administrative approval for the scheme "Unique ID for BPL families" was given on 3rd March, 2006 by the Department of Information Technology, Ministry of Communications and Information Technology.

6. Subsequently, a Processes Committee was set up on 3rd July, 2006 to suggest processes for updation, modification, addition and deletion of data fields from the core database to be created under the said project. The Committee appreciated the need of a UID Authority to be created by an executive order under the aegis of the Planning Commission to ensure a pan-departmental and neutral identity for the Authority.

7. Thereafter, since the Registrar General of India was engaged in the creation of the National Population Register (NPR) and issuance of Multi-purpose National Identity Cards to citizens of India, it was decided with the approval of the Prime Minister, to constitute an Empowered Group of Ministers (EGoM) to collate the two schemes – the NPR under the Citizenship Act, 1955 and the UID scheme. The EGoM was also empowered to look into the methodology and specific milestones for early and effective completion of the scheme and take a final view on these. The EGoM was constituted on 4th December, 2006 and a series of meetings took place as follows:-

a) First meeting of EGoM: 22nd November, 2007 :

- Recognized the need for creating an identity related resident database regardless of whether the database is created based on a

de-novo collection of individual data or is based on already existing data such as the voter list.

- Need to identify and establish institutional mechanism that will own the database and be responsible for its maintenance.

b) Second meeting of EGoM: 28th January, 2008

- The proposal to establish UID Authority under the Planning Commission was approved.

c) Third meeting of EGoM: 7th August, 2008

- Referred certain matters raised with relation to the UIDAI to a Committee of Secretaries for examination.

d) Fourth meeting of EGoM: 4th November, 2008

- It was decided to notify UIDAI as an executive authority. Decision on investing it with statutory authority would be taken up later.
- UIDAI would be anchored in the Planning Commission for five years after which a view would be taken as to where the UIDAI would be located within Government.

8. The UIDAI was constituted on 28th January, 2009 under the Chairmanship of Shri Nandan M. Nilekani as an attached office under the aegis of the Planning Commission. The UIDAI was *inter-aila* given the responsibility to lay down plan and policies to implement the UID scheme, own and operate the UID database and be responsible for its updation and maintenance on an ongoing basis. The Prime Minister's Council of UIDAI and a Cabinet Committee on UIDAI (called CC-UIDAI) were set up on 30th July, 2009 and 22nd October, 2009 respectively for achieving the objectives of the Authority.

9. Asked why the matter of conferring statutory status to the UIDAI was deferred, the Ministry of Planning have submitted their written response as under:-

"Based on the proposal that formation of the UIDAI under the Planning Commission would ensure better coordination with different departments, it was decided that initially the UIDAI may be notified as an executive authority under the Planning Commission and the issue of investing the UIDAI with statutory authority and the reconciliation of such statutory role with National Registration Authority (NRA) can be considered at an appropriate time".

10. Justifying the extension of the UID scheme, which is initially intended for BPL families, to all residents and other categories of individuals, the Ministry of Planning in their written response have submitted as under:-

"The UID scheme was extended to all residents and other categories of individuals to gradually do away the *de novo* exercises each time for field level data collection. Simultaneously, it would also ensure that links to more and more identity based databases are created by inclusion of the UID number in their databases".

11. In this regard, Dr. R. Ramakumar, Expert, in his post-evidence reply has, among other things, added as follows:-

".....it has been proven again and again that in the Indian environment, the failure to enroll with fingerprints is as high as 15% due to the prevalence of a huge population dependent on manual labour. These are essentially the poor and marginalised sections of the society. So, while the poor do indeed need identity proofs, aadhaar is not the right way to do that...."

12. The Ministry in their written reply have stated, among other things, that :-

"While there may be a number of factors contributing to the failure to enroll (like geography, age groups, occupation etc.) and the figures quoted..... may not hold good in all situations, failure to enroll is a reality.... For enrolment purpose, UIDAI has already built in processes to handle biometric exceptions."

D. Issuance of aadhaar numbers pending passing the Bill by Parliament

13. Justice Dr. M. Rama Jois, MP (Rajya Sabha) in his representation addressed to the Chairman, Standing Committee on Finance has *inter-alia* pointed out since the NIDAI Bill is pending for consideration before the Standing Committee on Finance, implementation of the provisions of the Bill, issue of aadhaar numbers and incurring expenditure from the exchequer by the Government is a clear circumvention of Parliament, and therefore, should be kept in abeyance awaiting debate in and decision of both Houses of Parliament.

14. On being asked about the legal basis under which the UIDAI is functioning at present, and the mechanism that the UIDAI has adopted, since its inception, to deal with any of the issues like security and confidentiality of

information and other offences related to issue of the aadhaar numbers, the Ministry of Planning in a written reply have *inter-alia* stated that:-

"....The matter about commencement of operation of the UIDAI before a legal framework was put in place was referred to the Ministry of Law & Justice wherein opinion was sought on the issue whether in absence of a specific enabling law, would there be any constraints in collecting the data (including biometrics) and in issuing the UID numbers to residents in accordance with the mandate given to the Authority. The Ministry of Law & Justice, after examining the matter, had mentioned that it is a settled position that powers of the Executive are co-extensive with the legislative power of the Government and that the Government is not debarred from exercising its executive power in the areas which are not regulated by specific legislation. It had also been opined that till the time such legislation is framed the Authority can continue to function under the executive order issued by the Government and the scheme that may be prepared by the UIDAI. It was also opined that the Authority can collect information/data for implementation of the UID scheme. Such implementation can be done by giving wide publicity to the scheme and persuading the agencies/individual to part with necessary information.

The UIDAI has not faced issues such as breach of security and confidentiality, manipulation of biometrics, unauthorized access to the CIDR or other related offences since its inception.....till the time Parliament passes the Bill, these matters will be covered by the relevant laws".

15. The opinion of the Attorney-General of India on the above mentioned issues as obtained by the Ministry of Law & Justice (Department of Legal Affairs) is furnished below:-

"The competence of the Executive is not limited to take steps to implement the law proposed to be passed by Parliament. Executive Power operates independently. The Executive is not implementing the provisions of the Bill. The Authority presently functioning under the Executive Notification dated 28th January, 2009 is doing so under valid authority and there is nothing in law or otherwise which prevents the Authority from functioning under the Executive Authorisation.

The power of Executive is clear and there is no question of circumventing Parliament or the Executive becoming a substitute of Parliament. On the contrary, what is sought to be done is to achieve a seamless transition of the authority from an Executive Authority into a statutory authority.

All the expenditure which is being incurred is sanctioned by Parliament in accordance with the financial procedure set forth in the Constitution. If the Bill is not passed by any reason and if Parliament is of the view that

the Authority should not function and express its will to that effect, the exercise would have to be discontinued. This contingency does not arise.

The present Bill being implemented without Parliaments' approval does not set a bad precedent in the Parliamentary form of Government. On the contrary, the fact that the Authority is sought to be converted from an Executive Authority to a statutory authority, it underlines the supremacy of Parliament".

16. On this issue, Dr. Usha Ramanathan, Expert, in her post-evidence reply has *inter-alia* stated that:-

"Article 73 of the Constitution delineates the extent of executive power of the Union and describes it as extending to matters with respect to which Parliament has power to make laws.....

While the executive power of the Union, and of the States, is co-extensive with the legislative power of the Union and the States, this is a provision that sets out the limits of the power. These are not provisions that are meant to make Parliament, or the legislatures, redundant. While executive power cannot extend beyond the legislative power of the Union and the States, Parliament and the legislatures can, and routinely do, set out the terms on which the executive is to function. This is also how 'delegated legislation' or 'subordinate legislation' has to be within the extent of the 'parent statute'.....

It is a plain misconception to think that the executive can do what it pleases, including in relation to infringing constitutional rights and protections for the reason that Parliament and legislatures have the power to make law on the subject".

E. UID scheme

17. A resident who seeks to obtain an aadhaar number shall provide his / her demographic and biometric information to enrolling agencies appointed by Registrars. A resident who does not possess any documentary proof of identity or proof of address can obtain an aadhaar number by being introduced by an introducer.

18. The UIDAI has executed Memoranda of Understanding (MoU) with the partners including all the States and Union Territories, 25 financial institutions (including LIC) to act as Registrars for implementing the scheme. The roles and responsibilities of the partners flow from the MoU.

19. The UIDAI requires only basic identity data such as name, age, gender, address and relationship details in case of minors, for issue of unique identity number. This is commonly known as 'Know your Resident (KYR)'. The partner registrars are using this resident interface as an opportunity to update their own selected data bases such as ration card number, MGNREGS job card number, PAN card etc. This is commonly known as 'Know your Resident Plus' (KYR+). Collection of these information is purely an initiative of respective Registrars and not mandatory for issue of aadhaar number.

20. The UIDAI is collecting bare minimum demographic information from the residents; any other kind of information, viz., rural, semi-urban and urban areas, persons with disabilities, migrant unskilled and unorganized workers, nomadic tribes and others who do not have any permanent dwelling house, is not available with UIDAI. Asked how the coverage of marginalized sections of population, without having the data of aadhaar numbers issued to them, could be achieved, the Ministry has submitted that the Authority proposes to cover the marginalized and poor sections of the population through special enrolment camps organized for them.

21. In a news item dated 6th September, 2011, it has been reported that the Ministry of Home Affairs have identified flaws in the enrolment process followed by the UIDAI, citing cases where people have got aadhaar numbers on the basis of false affidavits.

22. Further, an expert has brought to the notice of the Standing Committee on Finance that issues of liability and responsibility for maintaining accuracy of data on the Register, conducting identity checks and ensuring the integrity of the overall operation of the UID scheme have not been resolved. On being asked to comment on this, the Ministry of Planning have submitted a written reply as follows:-

".....Registrars have to put processes in place to ensure that the data collected is accurate. It is also the responsibility of the Registrars to appoint verifiers (for verifying the documents presented by the resident) and introducers to handle cases where the residents do not have any documents".

23. It has been reported in a news item that the Ministry of Home Affairs have alleged that some of the registrars have not adhered to the laid down procedures under UIDAI. It has also been noticed that the Government of Kerala vide G.O.(MS)No:16/2011/ITD dated 3rd June, 2011 has *inter-alia* stated that the MoU was signed between UIDAI and Government of Kerala for implementation of the UID project subject to condition that the clauses on the standards, protocol, criteria etc. in the MoU shall be in accordance with the State IT policy.

F. Global Experience

24. It has been brought to the notice of the Standing Committee on Finance that on the basis of the findings of London School of Economics (LSE) report, the Government of United Kingdom has abandoned its ID project (repealed its Identity Cards Act, 2006) citing a range of reasons, which includes high cost, unsafe, untested and unreliable technology, and the changing relationship between the state and the citizen etc.

To a specific issue of relevance of any of the above mentioned factors in the Indian context, it has been informed by the Ministry as follows:-

"There are significant differences between the UK's ID card project and the UID project and to equate the two would not be appropriate. The differences are as follows:-

a) The UK system involved issuing a card which stored the information of the individual including their biometrics on the card. UID scheme involves issuing a number. No card containing the biometric information is being issued. UK already has the National insurance number which is used often as a means to verify the identity of the individual.

b) The statutory framework envisaged made it mandatory to have the UK ID card. Aadhaar number is not mandatory.

c) The data fields were large and required the individual to provide accurate information of all other ID numbers such as driver's license, national insurance number and other such details thereby linking the UK ID card database to all other databases on which the individual was registered. UID Scheme collects limited information and the database is not linked to other databases.

d) In UK, the legislative framework and structure approached it from a security perspective. The context and need in India is different. The UID scheme is envisaged as a mean to enhance the delivery of welfare benefits and services".

25. When asked as to whether any analysis has been carried out on the experience of countries where National IDs are in use as well as countries where it has been discontinued, the Ministry have *inter-alia* informed the Committee in a written reply as follows:-

"In some countries the use of smart cards to store significant data about the resident added to concerns about ID fraud and duplication.....

The comparisons between developed countries, which are looking at additional ID forms from a security perspective, versus India, a developing country which, like Brazil and Mexico, is attempting to, build the basic identity and verification infrastructure essential to delivering welfare benefits, and promoting inclusive growth, is not a reasonable one".

G. Existing identity forms vs need for aadhaar number

26. A view has been expressed that adding another form of identity (i.e. aadhaar number) without studying the possibility of using the existing forms of identity, for example, Voter ID card, to solve the current problems appears to be a waste of resources.

27. The Ministry of Planning in a written submission have *inter-alia* stated the following:-

".....in the current framework there is no single document which is uniformly acceptable as proof of identity across India – irrespective of age, gender and familial connections. Establishing identity is a challenge for the poor, particularly when they move from place to place as a consequence lack of proof of identity makes it difficult for the poor to access benefits and services.

.....Aadhaar number is an enabler..... The benefits of aadhaar number are:-

"For residents: The aadhaar number will become the single source of identity verification. Once residents enroll, they can use the number multiple times – they would be spared the hassle of repeatedly providing supporting identity documents each time they wish to access services such as obtaining a bank account, passport, driving license, and so on.... the number will also give migrants mobility of identity.

For Registrars and enrollers: The UIDAI will only enroll residents after de-duplicating records. This will help Registrars clean out duplicates from their databases, enabling significant efficiencies and cost savings. For Registrars focused on cost, the UIDAI's verification processes will ensure lower Know Your Resident (KYR) costs. For Registrars focused on social goals, a reliable identification number will enable them to broaden their reach into groups that till now, have been difficult to authenticate. The strong authentication that the aadhaar number offers will improve services, leading to better resident satisfaction.

For Governments: Eliminating duplication under various schemes is expected to save the Government exchequer a substantial amount. It will also provide Governments with accurate data on residents, enable direct benefit programs, and allow Government departments to coordinate investments and share information.

28. The Ministry have further added that:

"....reason for starting the project is not for overriding existing Ids.....All the above documents are relevant to a domain and for a service. Aadhaar number is to be used as a general proof of identity and proof of address".

H. Identity and Eligibility

29. According to a news item dated 7th July, 2011, the operationalisation of aadhaar, the unique identification number, will make it possible to link entitlements to targeted beneficiaries. But it will not ensure beneficiaries have been correctly identified. Thus, the old problem of proper identification that bedevils the present system will continue.

30. It has also been brought to the notice of the Standing Committee on Finance that a key issue in targeted welfare schemes is said to be of eligibility and not identity. Government entitlements are unavailable to the poor, primarily due to the eligibility determination process having many loopholes and lacunae. One identity like aadhaar number has nothing to do with such entitlements.

31. Asked to furnish comments, the Ministry of Planning in a written reply have stated that-

"....With aadhaar number integration in various Government schemes, the identity of the beneficiary gets established, by which it is ensured that the government scheme benefits reach the intended beneficiaries. Availability of identity and eligibility information together provides an important tool to plug the loopholes in the eligibility determination process, and in managing the eligibility life cycle for a beneficiary".

32. Dr. Reetika Khera, Expert, while deposing before the Committee has *inter-alia* stated as follows:-

".....exclusion is more on account of poor coverage of these schemes. Say, for instance, in the Public Distribution System, the Planning Commission says that only 'x' per cent of the rural population will get the BPL cards and because of that cap that is set at the Central level, we find that lots of people are excluded".

I. Aadhaar Number and National Population Register (NPR)

33. The Standing Committee on Finance, during briefing on the Bill held on 11th February, 2011, raised *inter-alia* the issue of possibility of dovetailing the UID exercise with the census operation. In this regard, the Ministry of Planning in their written reply have, among other things, stated as follows:-

"the UIDAI is adopting a multiple-registrar approach and the Registrar General of India (RGI) will be one of the Registrars of the UIDAI. To synergize the two exercises, an Inter Ministerial Coordination Committee has been set up to minimize duplication. The UIDAI is making all efforts to synergize with National Population Register (NPR) exercise....".

34. According to a news item dated 6th September, 2011, the Ministry of Home Affairs said that it would not be preferable to rely entirely on private sector players' for biometric enrolments into the NPR since the population register will form the basis on which citizenship would be determined in the future. Unlike the UIDAI system, the NPR system follows an elaborate procedure to verify and cover the entire population of every area; and the data collected is subjected to 'social vetting'; and accountability can be fixed under the NPR system.

35. In an another news article it has been reported that while registration to the NPR is compulsory and a National Identity Number is linked to each name, the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 does not approve of linking biometrics with personal information. However, according to, the annual reports of the Ministry of Home Affairs, it said that integration of photographs and finger biometrics of 17.2 lakh out of 20.6 lakh records has been completed.

J. Coordination between the agencies involved in the UID scheme

36. In a detailed note on the NIDAI Bill, the Ministry of Planning have *inter-alia* submitted that:-

"Implementation of a project of this size is challenging. It involves co-ordination with multiple stakeholders and effective monitoring of implementation at every level...."

37. The Ministry of Finance (Department of Expenditure), however, while commenting on embedding aadhaar numbers in databases to enable interaction have stated that:-

"It must be done urgently by single agency, perhaps NPR. Cabinet has approved (22.7.2010) outlay of Rs. 3,023.01 crore *inter-alia* for assistance for Information Communication Technology (ICT) infrastructure of Rs. 450 crore for integrating/ synergizing Aadhaar numbers with existing databases. Concerned about lack of co-ordination leading to duplication effort and expenditure with at least 6 agencies collecting information (NPR, MNREGA, BPL Census, UID, RSBY and Bank Smart Cards)."

38. It has been reported in a news item dated 3rd October, 2011 that the UID project has become focus of the ire of various arms of the government for rather disparate reasons. Asked to furnish the comments on the said news item, the Ministry of Planning have submitted a written reply as follows:-

Views reported in the news item	Comments of the Ministry of Planning
....the Finance Ministry rejected UIDAI's request for Rs.14,000 crore expenditure programme.	It is not correct that the Finance Ministry have rejected the budget expenditure. The proposal for phase III has been recommended by the EFC on 15 September, 2011 after optimizing the cost estimates with certain stipulations to be complied with by the UIDAI to achieve economy of scales, avoid duplication and avail convergence in the programme.
...the planning commission too jumped into the fray, suddenly awakening to the deficiency in the structure and functioning of the Authority.	Aadhaar programme is a complex project of its kind launched first time in the country. EFC is an Inter-Ministerial forum to appraise the proposal rigorously to facilitate decision making by the Competent Authority. Planning Commission is one of the nodal appraising agencies to the EFC forum. On approval by

	<p>Planning Commission some issues regarding design parameters, cost estimates and manner of implementation were emerged, which could not be visualized at project formulation stage. These issues have been deliberated in the EFC meeting and resolved through certain stipulations to be adhered to by UIDAI during execution of the project.</p>
<p>Adding to the confusion were the apparently negative comments made by the Ministry of Home Affairs(MHA) on the flaws in the enrolment process and the security of the biometric data. The Home Ministry's apparently nervous of the UIDAI's efforts to extend its aadhaar enrolment mandate, as the office of the Registrar General of India, an arm of the Ministry, is simultaneously compiling a National Population Register (NPR) which is a comprehensive identity database, as a part of the 2011 census operations currently under way.</p>	<p>While responding to the EFC memo of the UIDAI, the RGI (MHA) have observed as follows:- A security audit of the entire process of UIDAI including enrolment process in UIDAI, the enrolment software, data storage, data management, etc. should be conducted by an appropriate agency.</p> <p>The Comments of the UIDAI on this are:- UIDAI is developing a monitoring and evaluation framework to provide a comprehensive mechanism for continuously monitoring and evaluating the UIDAI program. Considering that a formal structured monitoring and evaluation framework will form the cornerstone for measuring the outcome of UIDAI programme, a distinct component 'Monitoring and evaluation' has been included in the current EFC proposal. Some of the audits planned on a periodic basis are:- (i) Enrolment Client Audit; (ii) Enrolment Process (Field) Audits; (iii) ASDMSA Application Audits; (iv) Authentication User Agency Audits; (v) Data Center Audits; (vi) Security Audits; (vii) Impact Assessment (Grants in Aid for Research); and (viii) Other Third Party Audit Services.</p>
<p>The confusion about the turf of UIDAI and the MHA is rather surprising.</p>	<p>UIDAI has no comments to offer.</p>

<p>given the fact that an EGoM was constituted as early as 2006 to collate the two schemes, namely the NPR and the unique identification number, as aadhaar was then known.</p>	
<p>RBI made the waters murkier by first going against the Finance Ministry notification that was issued in 2010 to permit the use of Know Your Customer (KYC) norms- by limiting the use of aadhaar numbers to "small accounts". It then retracted, by allowing use of aadhaar numbers to all bank accounts without any limitations, but only after again insisting that the banks must satisfy themselves about the current address of the customer. RBI's reluctance to fully accept the aadhaar numbers for the KYC norms is surprising, given that more than a dozen leading banks in the country are partnering with UIDAI to deliver aadhaar numbers to the citizens, and also when the aadhaar number have been accepted by the insurance companies and SEBI for meeting KYC norms.</p>	<p>It is clarified that-</p> <p>(i) aadhaar is sufficient KYC for opening all bank accounts now. This includes no-frill accounts- as per Reserve Bank's circular dated January 27, 2011 – and any bank account as per September 28, 2011 circular.</p> <p>(ii) Banks may ask for additional proof of residence if the current residence is not the same as the address given on the aadhaar document. This procedure is consistent with bank policies applicable to all other officially valid documents including passport, driving license and is not specific to aadhaar.</p>

K. Civil Liberties Perspective

39. In a detailed note on the Bill, the Ministry of Planning have stated that issues like access and misuse of personal information, surveillance, profiling, prohibiting other data bases from storing aadhaar numbers; and securing confidentiality of information which is in the registrars domain need to be addressed in larger data protection legislation. In this connection, the Ministry have been asked to comment on the view that the Bill in its current form appears to be unsafe in law as there is no law at present on privacy, and data protection, therefore, it would be appropriate to consider the Bill for legislation only after passing the legislation on privacy, and data protection so as to ensure that there is no conflict between these laws. The Ministry in a written reply have *inter-alia* stated as under:-

"UIDAI has taken appropriate steps to ensure security and protection of data under this law and has incorporated data protection principles within its policy and implementation framework.....

Since appropriate steps have been taken, there is no dependency on the general data protection law.....when the data protection framework comes into place the Authority will follow the same since a national data protection law will apply to all agencies and institutions collecting information.

Collection of information without a privacy law in place does not violate the right to privacy of the individual....There is no bar on collecting information, the only requirement to be fulfilled with respect to the protection of the privacy of an individual is that care should be taken in collection and use of information, consent of individual would be relevant, information should be kept safe and confidential...

.....The proposed Privacy law should also seek to strike a balance between the legitimate demands of protecting individual liberties while recognizing the need for larger public interest to prevail in certain well defined circumstances".

40. Responding to a suggestion received from PRS Legislative Branch that the existence of a unique identifier may facilitate record linkages across separate databases, the Ministry in a written reply have submitted that issues of linking and matching of databases need to be addressed through a data protection legislation which is currently being considered by the Department of Personnel.

41. The National Human Rights Commission (NHRC), on being asked to comment on the implications of the provisions of the Bill on the individual's right to privacy, has *inter alia* informed the Committee in their post-evidence reply as follows:-

....the right of privacy presupposes that such information relating to an individual which he would not like to share with others will not be disclosed. It may be mentioned that the right of privacy is not an absolute right....."

42. On the same issue, Dr. Usha Ramanathan, expert, in her post-evidence reply has stated that:-

"....The right to dignity, the right to privacy, personal security and safety, the protection against surveillance, are constitutionally protected. The production of a number accompanied by the use of methods such as fingerprinting and iris scanning is even more invasive than is permitted to be applied to alleged offenders; Article 20 (3) provides protection against

compulsory extraction of personal information. Denying services, and rights, to persons because they are unwilling to part with the information in a manner that is more than likely to result in convergence and commodification of their personal information, surveillance, profiling, tagging and tracking is compulsory extraction that clearly reduces the constitutional rights of an ordinary citizen to less than that of an alleged offender. And that this is being done without the protection of law renders the exercise, per se, illegal. Apart from its 'uses', the potential for abuse is undeniable. In a similar context, another court – the Philippines Supreme Court – said:the data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist”.

L. Financial Implications

(i) Feasibility Study

43. The Ministry of Planning in a detailed note on the Bill have stated that aadhaar number is cost-effective compared to other alternate targeted solutions to the problems identified in delivering services and benefits such as eliminating duplicate and fake identities. The Detailed Project Report (DPR) of the UID scheme has been prepared and submitted by M/s. Ernst & Young Pvt.Ltd. in April, 2011.

44. Asked whether any committee has been set up to study the financial implications of the UID scheme; and also to furnish the details of feasibility study carried out, if any, covering all aspects of the UID scheme such as setting up of the proposed NIDAI, and cost-benefit analysis, the Ministry in a written reply have, among other things, submitted that:-

“No committee has been set up to study the financial implications of the UID scheme. As per laid down guidelines/procedure the Expenditure Finance Committee (EFC) reviews project proposals and its financial implications wherein the views of all stakeholders/ministries are taken in to account...

.....deliberations were held with all relevant stakeholders including Planning Commission, Registrar General of India, Election Commission of India, Ministry of Rural Development, Ministry of Urban Development and State Governments. A Proof of Concept study was undertaken in the States of Gujarat, Karnataka, U.P. and Orissa in four rural and one urban locations to establish the feasibility of linking UID with partner-databases and to validate the possibility of one-time linkage which once

established would be maintained on an ongoing basis by the UIDAI. An assessment study was carried out in 10 Central Ministries and their respective departments in four states (Karnataka, Uttar Pradesh, Gujarat and West Bengal).

(ii) Estimated cost of the UID scheme

45. The UID scheme is a Central Sector Scheme. The estimated cost of the Phase-I and Phase-II of the scheme spread over five years is Rs.3170.32 crore (Rs.147.31 crore for Phase-I and Rs.3023.01 crore for Phase-II). The estimated cost includes scheme components for issue of 10 crore UID numbers by March, 2011 and recurring establishment costs for the entire scheme up to March, 2014. The Budget for Phase-III of the scheme to the tune of Rs.8861 crore has been approved.

46. According to news items, the total cost of the UID scheme may run up to Rs. 1,50,000 crore. Even after the commitment of such levels of expenditures, the uncertainty over the technological options and ultimate viability of the scheme remains.

(iii) Comparative cost of aadhaar number and existing ID documents

47. Asked to furnish the details of comparative cost of existing ID documents (per individual), namely, Voter Id card, PAN card, driving license and aadhaar number, the Ministry has *inter-alia* informed the Committee in a written reply that the comparative costs of the documents mentioned above are not available.

(iv) Funding of other biometric projects

48. It is noticed that a project namely, Bharatiya - Automated Finger Print Identification System (AFSI), was launched in January, 2009, being funded by the Department of Information Technology, Ministry of Communications and Information Technology, for collection of biometric information of the people of the country.

49. Asked to clarify as to whether the biometric information (finger prints) being collected under the Bharatiya - AFSI project could also be used by the UIDAI, the Ministry have submitted that-

"The biometrics required for the aadhaar project are iris, ten finger prints and photograph. To ensure uniqueness of the individual, it is essential that the biometrics captured are as per the specifications laid down by the Biometrics Standards Committee. The quality, nature and manner of collection of biometric data by other biometric projects may not be of the nature that can be used for the purpose of the aadhaar scheme and hence it may not be possible to use the fingerprints captured under the Bhartiya-AFSI project".

(v) Revenue model of the UIDAI

50. According to a detailed note on the bill furnished by the Ministry of Planning, demographic data and address verification will be provided free of cost till a separate pricing policy is announced in due course.

51. However, in a news item dated 6th September, 2011, it has been reported that the Ministry of Home Affairs pointed out uncertainties in the UIDAI's revenue model.

M. Technology

52. The Biometrics Standards Committee set up by the UIDAI has recognized in its report that a fingerprints-based biometric system shall be at the core of the UIDAI's de-duplication efforts. It has further noted that it is:

"...conscious of the fact that de-duplication of the magnitude required by the UIDAI has never been implemented in the world. In the global context, a de-duplication accuracy of 99% has been achieved so far, using good quality fingerprints against a database of up to fifty million. Two factors however, raise uncertainty about the accuracy that can be achieved through fingerprints. First, retaining efficacy while scaling the database size from fifty million to a billion has not been adequately analyzed. Second, fingerprint quality, the most important variable for determining de-duplication accuracy, has not been studied in depth in the Indian context".

53. Asked to explain the reliability of technical architecture of the UID scheme, the Ministry of Planning in a detailed note on the NIDAI Bill have, among other things, stated as follows:-

"The UID project is a complex technology project. Nowhere in the world has such a large biometric database of a billion people being maintained. The frontiers of technology in biometrics are being tested and used in the project.....

The technical architecture of the UID scheme is at this point, is based on high-level assumptions. The architecture has been structured to

ensure clear data verification, authentication and de-duplication, while ensuring a high level of privacy and information security.....

The project team is learning and adapting to the challenges and ensuring that the solutions that are being offered are the best in the world to achieve the task....".

54. Further asked as to given the high degree of assumptions on the reliability of technology adopted by the UIDAI and probability of system failures of different degrees, whether incurring huge costs on the UID scheme is prudent and affordable, the Ministry have stated in a written reply, among other things, as follows:-

".....UIDAI is cognizant of the fact that biometric matching (which is a patterns matching) by its very nature will suffer from inaccuracy. However, these inaccuracy levels are less than 1%. This cannot be a reason for not attempting to use the technology.

It is well acknowledged that there will be failures in authentication for various reasons. After Proof of Concept studies on authentication, appropriate policies and processes will be developed to take care of situations where failure occurs for various reasons.....The choice of using the authentication services is left to the third party service provider.....Concerned agencies will have to develop policies and procedures to handle such exceptional situations....."

55. In a news article, one of the representatives of the UIDAI has admitted that the quality of fingerprints is bad because of the rough exterior of fingers caused by hardwork, and this poses a challenge for later authentication.

N. National Security vs the UID scheme

(i) Illegal residents

56. A concern over the possibility of illegal residents getting aadhaar numbers, and the safeguards in this regard has been raised by the Standing Committee on Finance during the sitting held on 11 February, 2011. In a written reply, the Ministry of Planning have stated as under:-

"Aadhaar number is not a proof of citizenship or domicile [Clause 6 of the Bill]. It only confirms identity and that too subject to authentication [Clause 4(3)]. This is clearly mandated in the NIDAI Bill and the communication being sent to the resident.

It is the responsibility of the Registrars to enroll a resident after due verification as per the procedure laid down by the UIDAI. If a person is not a resident as per the Bill, the Authority is being vested with the power

to omit/deactivate the aadhaar number [Clause 23 (2) (g)]. Subsequent attempts to enter the system can be detected".

(ii) **Involvement of Private agencies**

57. On the issue of security of proposed data of UIDAI, an unstarred question (no.2989) was raised in Rajya Sabha. The Minister of State in the Ministry of Planning and Minister of State in the Ministry of Parliamentary Affairs tabled the answer to the above said question in Rajya Sabha on 22 April, 2010 as follows:-

"National Informatics Centre (NIC) had pointed out that the issues relating to privacy and security of UID data, in case the data is not hosted in a Government data centre may be taken into consideration.

UIDAI is of the opinion that the hosting of data in a private data centre does not necessarily lead to a violation of privacy or security. Appropriate contractual arrangement shall be put in place with the data centre space provider to ensure security and privacy of the data.

At present, UIDAI does not have its own permanent facility to house its data centre. Therefore, 75 sq.ft of data centre space has been hired from M/s. ITI Ltd. for proof of concept and pilot on a rental basis".

58. The Ministry of Home Affairs, according to a news item, have questioned the security of citizens' biometric data in UIDAI's 'outsourced service oriented infrastructure' model.

59. To a specific query as to could outside agencies be allowed to partake in the UID scheme when doubts have been expressed on possible compromise with the interests of the national security, the Ministry of Planning in a written reply have *inter alia* stated that:-

"....the UIDAI has followed government procurement process and engaged the appropriate agencies for the implementation of the UID scheme....The UIDAI has also implemented a comprehensive information security policy....."

60. It is, however, reported in various news articles as late as dated 26th November, 2011 that controversies between the Ministry of Home Affairs and the UIDAI over the issues such as manner and processes followed by the UIDAI, duplication of efforts between National Population Register and aadhaar, and security of data remain unresolved.

PART - II

OBSERVATIONS / RECOMMENDATIONS

1. The Committee have carefully examined the written information furnished to them and heard the views for and against the National Identification Authority of India (NIDAI) Bill from various quarters such as the Ministry of Planning, the Unique Identification Authority of India (UIDAI), the National Human Rights Commission (NHRC) and experts. The clearance of the Ministry of Law & Justice for issuing aadhaar numbers, pending passing the Bill by Parliament, on the ground that powers of the Executive are co-extensive with the legislative power of the Government and that the Government is not debarred from exercising its Executive power in the areas which are not regulated by the legislation does not satisfy the Committee. The Committee are constrained to point out that in the instant case, since the law making is underway with the bill being pending, any executive action is as unethical and violative of Parliament's prerogatives as promulgation of an ordinance while one of the Houses of Parliament being in session.
2. The Committee are surprised that while the country is on one hand facing a serious problem of illegal immigrants and infiltration from across the borders, the National Identification Authority of India Bill, 2010 proposes to entitle every resident to obtain an aadhaar number, apart from entitling such other category of individuals as may be notified from time to time. This will, they apprehend, make even illegal immigrants entitled for an aadhaar number. The Committee are unable to understand the rationale of expanding the scheme to persons who are not citizens, as this entails numerous benefits proposed by the Government. The Committee have received a number of suggestions for restricting the scope of the UID scheme only to the citizens and for considering better options available with the Government by issuing Multi-Purpose National Identity Cards (MNICs) as a more acceptable alternative.

3. The Committee observe that *prima facie* the issue of unique identification number, which has been referred to as "aadhaar number" to individuals residing in India and other classes of individuals under the Unique Identification (UID) Scheme is riddled with serious lacunae and concern areas which have been identified as follows:-

- (a) The UID scheme has been conceptualized with no clarity of purpose and leaving many things to be sorted out during the course of its implementation; and is being implemented in a directionless way with a lot of confusion. The scheme which was initially meant for BPL families has been extended for all residents in India and to certain other persons. The Empowered Group of Ministers (EGoM), constituted for the purpose of collating the two schemes namely, the UID and National Population Register(NPR), and to look into the methodology and specifying target for effective completion of the UID scheme, failed to take concrete decision on important issues such as (a) identifying the focused purpose of the resident identity database; (b) methodology of collection of data; (c) removing the overlapping between the UID scheme and NPR; (d) conferring of statutory authority to the UIDAI since its inception; (e) structure and functioning of the UIDAI; (f) entrusting the collection of data and issue of unique identification number and national identification number to a single authority instead of the present UIDAI and its reconciliation with National Registration Authority;
- (b) The need for conferring of statutory authority to the UIDAI felt by the Government way back in November, 2008, but was deferred for more than two years for no reason. In this regard, the Ministry of Planning have informed the Committee that till the time Parliament passes the NIDAI Bill, crucial matters impinging

on security and confidentiality of information will be covered by the relevant laws. The Committee are at a loss to understand as to how the UIDAI, without statutory power, could address key issues concerning their basic functioning and initiate proceedings against the defaulters and penalize them;

- (c) The collection of biometric information and its linkage with personal information of individuals without amendment to the Citizenship Act, 1955 as well as the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, appears to be beyond the scope of subordinate legislation, which needs to be examined in detail by Parliament;
- (d) Continuance of various existing forms of identity and the requirement of furnishing 'other documents' for proof of address, even after issue of aadhaar number, would render the claim made by the Ministry that aadhaar number is to be used as a general proof of identity and proof of address meaningless;
- (e) In addition to aadhaar numbers being issued by the UIDAI, the issuance of smart cards containing information of the individuals by the registrars is not only a duplication but also leads to ID fraud as prevalent in some countries; and
- (f) The full or near full coverage of marginalized sections for issuing aadhaar numbers could not be achieved mainly owing to two reasons viz. (i) the UIDAI doesn't have the statistical data relating to them; and (ii) estimated failure of biometrics is expected to be as high as 15% due to a large chunk of population being dependent on manual labour.

4. The Committee regret to observe that despite the presence of serious difference of opinion within the Government on the UID scheme as illustrated below, the scheme continues to be implemented in an

overbearing manner without regard to legalities and other social consequences:-

- (i) The Ministry of Finance (Department of Expenditure) have expressed concern that lack of coordination is leading to duplication of efforts and expenditure among at least six agencies collecting information (NPR, MGNREGS, BPL census, UIDAI, RSBY and Bank Smart Cards);
- (ii) The Ministry of Home Affairs are stated to have raised serious security concern over the efficacy of introducer system, involvement of private agencies in a large scale in the scheme which may become a threat to national security; uncertainties in the UIDAI's revenue model;
- (iii) The National Informatics Centre (NIC) have pointed out that the issues relating to privacy and security of UID data could be better handled by storing in a Government data centre;
- (iv) The Ministry of Planning have expressed reservation over the merits and functioning of the UIDAI; and the necessity of collection of iris image;
- (v) Involvement of several nodal appraising agencies which may work at cross-purpose; and
- (vi) Several Government agencies are collecting biometric(s) information in the name of different schemes.

5. The Committee are also unhappy to observe that the UID scheme lacks clarity on many issues such as even the basic purpose of issuing "aadhaar" number. Although the scheme claims that obtaining aadhaar number is voluntary, an apprehension is found to have developed in the minds of people that in future, services / benefits including food entitlements would be denied in case they do not have aadhaar number.

It is also not clear as to whether possession of aadhaar number would be made mandatory in future for availing of benefits and services. Even if the aadhaar number links entitlements to targeted beneficiaries, it may not ensure that beneficiaries have been correctly identified. Thus, the present problem of proper identification would persist.

It is also not clear that the UID scheme would continue beyond the coverage of 200 million of the total population, the mandate given to the UIDAI. In case, the Government does not give further mandate, the whole exercise would become futile.

6. Though there are significant differences between the identity system of other countries and the UID scheme, yet there are lessons from the global experience to be learnt before proceeding with the implementation of the UID scheme, which the Ministry of Planning have ignored completely. For instance, the United Kingdom shelved its Identity Cards Project for a number of reasons, which included:- (a) huge cost involved and possible cost overruns; (b) too complex; (c) untested, unreliable and unsafe technology; (d) possibility of risk to the safety and security of citizens; and (e) requirement of high standard security measures, which would result in escalating the estimated operational costs. In this context, the Report of the London School of Economics' Report on UK's Identity Project *inter-alia* states that ".....identity systems may create a range of new and unforeseen problems.....the risk of failure in the current proposals is therefore magnified to the point where the scheme should be regarded as a potential danger to the public interest and to the legal rights of individuals". As these findings are very much relevant and applicable to the UID scheme, they should have been seriously considered.

7. The UID scheme facilitates the UIDAI and the registrars to create database of information of people of the country. Considering the huge database size and possibility of misuse of information, the Committee are

of the view that enactment of national data protection law, which is at draft stage with the Ministry of Personnel, Public Grievances and Pensions, is a pre-requisite for any law that deals with large scale collection of information from individuals and its linkages across separate databases. In the absence of data protection legislation, it would be difficult to deal with the issues like access and misuse of personal information, surveillance, profiling, linking and matching of data bases and securing confidentiality of information etc.

8. The Committee note that the Ministry of Planning have admitted that (a) no committee has been constituted to study the financial implications of the UID scheme; and (b) comparative costs of the aadhaar number and various existing ID documents are also not available. The Committee also note that Detailed Project Report (DPR) of the UID Scheme has been done much later in April, 2011. The Committee thus strongly disapprove of the hasty manner in which the UID scheme has been approved. Unlike many other schemes / projects, no comprehensive feasibility study, which ought to have been done before approving such an expensive scheme, has been done involving all aspects of the UID scheme including cost-benefit analysis, comparative costs of aadhaar number and various forms of existing identity, financial implications and prevention of identity theft, for example, using hologram enabled ration card to eliminate fake and duplicate beneficiaries.

9. The Committee are afraid that the scheme may end up being dependent on private agencies, despite contractual agreement made by the UIDAI with several private vendors. As a result, the beneficiaries may be forced to pay over and above the charges to be prescribed by the UIDAI for availing of benefits and services, which are now available free of cost.

10. The Committee find that the scheme is full of uncertainty in technology as the complex scheme is built up on untested, unreliable technology and several assumptions. Further, despite adverse observations by the UIDAI's Biometrics Standards Committee on error rates of biometrics, the UIDAI is collecting the biometric information. It is also not known as to whether the proof of concept studies and assessment studies undertaken by the UIDAI have explored the possibilities of maintaining accuracy to a large level of enrolment of 1.2 billion people. Therefore, considering the possible limitations in applications of technology available now or in the near future, the Committee would believe that it is unlikely that the proposed objectives of the UID scheme could be achieved.

11. The Committee feel that entrusting the responsibility of verification of information of individuals to the registrars to ensure that only genuine residents get enrolled into the system may have far reaching consequences for national security. Given the limitation of any mechanism such as a security audit by an appropriate agency that would be setup for verifying the information etc., it is not sure as to whether complete verification of information of all aadhaar number holders is practically feasible; and whether it would deliver the intended results without compromising national security. As the National Identity Cards to citizens of India are proposed to be issued on the basis of aadhaar numbers, the possibility of possession of aadhaar numbers by illegal residents through false affidavits / introducer system cannot be ruled out.

12. The Committee take note that the Ministry of Home Affairs have alleged that some of the registrars have not adhered to the laid down procedures under UIDAI which renders the Memoranda of Understanding (MoU) signed between the UIDAI and the registrars meaningless; and it compromises the security and confidentiality of information of aadhaar

number holders. Even, according to the latest media reports, controversies between the Ministry of Home Affairs and the UIDAI over issues such as the manner and processes followed by the UIDAI, duplication of efforts between NPR and aadhaar, and security of data still remain unresolved.

13. In view of the afore-mentioned concerns and apprehensions about the UID scheme, particularly considering the contradictions and ambiguities within the Government on its implementation as well as implications, the Committee categorically convey their unacceptability of the National Identification Authority of India Bill, 2010 in its present form. The data already collected by the UIDAI may be transferred to the National Population Register (NPR), if the Government so chooses. The Committee would, thus, urge the Government to reconsider and review the UID scheme as also the proposals contained in the Bill in all its ramifications and bring forth a fresh legislation before Parliament.

New Delhi
11 December, 2011
20 Agrahayana, 1933 (Saka)

YASHWANT SINHA
Chairman,
Standing Committee on Finance

NOTE OF DISSENT

Appendix I

Shri Raashid Alvi, MP

I do not agree with the paragraph "13" of the draft Report on "The National Identification Authority of India Bill, 2010".

I suggest to delete "this para".

Dated: 7 December, 2011

Sd/-
(RAASHID ALVI)

NOTE OF DISSENT

Prem Das Rai, MP

The National Identification Authority of India Bill, 2010

At the outset I do not believe that the bill should be rejected in the manner it has been. Since I have been inducted into the Committee recently I do not have the inputs that went in when the stakeholders and other Government departments were giving witness. I also do not know whether we gave enough time to the UID implementers to give evidence and present their point of view.

Hence, I would like to place on record that the issue of giving out Aadhaar numbers under the UID scheme, I believe, is one of the greatest import for social and economic inclusion in this country. I personally am privy to the kind of work that is needed at the grassroots as I was part of an organisation that did such work in the North East of India and other backward regions using some form of technology to bring in inclusion.

The linking of a person to a number and then being able to make give access to the right to that person is transformational. It is the next phase of transformation that technology can bring about in our own country. This has never been done anywhere in the world and we should be rightly proud of this.

I do agree there may be serious issues that need to be factored in which my esteemed colleagues have pointed out.

I recommend that the Bill may be discussed in Parliament bringing about some of the changes so desired and do not concur that the Bill be brought fresh.

Dated: 8 December, 2011

Sd/-
(PREM DAS RAI)

NOTE OF DISSENT

Manicka Tagore, MP

I could not attend this meeting on adoption of the draft report on the National Identification Authority of India Bill, 2010 because a very important discussion on the price rise was going on in the Lok Sabha. The Govt. of India with a view to ensure that the benefits of centrally sponsored schemes reaches to right persons and not misused, they had decided to issue unique identification numbers to all residents in India and to certain other persons the basic idea was to identification of the persons. The Adhar programme has been launched first time in India. The UIDAI officials had taken all possible precautions to make the exercise safe and secure. Both demographic and biometric datas were collected and its method of collecting datas were approved by the Demofic Standard and Verification Procedure Committee.

It is surprising to know that the committee members have not yet recognized the value of UID. This system will cut down fraud and corruption in every area of administration.

I dissent the observation and recommendation of the Standing Committee on Finance regarding the Draft Report on the National Identification Authority of India Bill, 2010. I request the Chairman that the UID bill may kindly be considered by the Government with our views and not rejected.

Dated 10 December, 2011

Sd/-
(MANICKA TAGORE)

NOTE OF DISSENT

Magunta Sreenivasulu Reddy, MP

I am writing this letter as a Dissent Note to the Draft Report on the National Identification of India Bill, 2010 which was adopted in the meeting held on 8.12.11. I could not attend the meeting fully since I was required to attend to Lok Sabha proceedings as my Congress Party had issued a Three Line Whip for 8.12.11 and left after signing.

After the meeting having gone into the matter again, I understand the Standing Committee have adopted the Draft Report with the recommendation as:

"considering the contradictions and ambiguities within the Government on its implementation as well as implications, the Committee categorically convey their unacceptability of the National Identification Authority of India Bill, 2010 in its present form. The Committee would, thus, urge the Government to reconsider and review the UID Scheme as also the proposals contained in the Bill in all its ramifications and bring forth a fresh legislation before Parliament."

I personally feel that instead the Bill may be considered in all its merits and the Draft Report may be modified accordingly. More extensive deliberations are therefore required to examine the Bill more thoroughly. This may therefore be treated as my Dissent Note to the Draft Report.

Dated 14 December, 2011

Sd/-
(MAGUNTA SREENIVASULU REDDY)

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Friday, the 11th February, 2011 from 1130 hrs to 1400 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Shri Bhartruhari Mahtab
3. Smt. Jaya Prada Nahata
4. Shri Rayapati Sambasiva Rao
5. Dr. Kavuru Sambasiva Rao
6. Shri Manicka Tagore

RAJYA SABHA

7. Shri S.S. Ahluwalia
8. Shri Raashid Alvi
9. Shri Piyush Goyal
10. Shri Moinul Hassan

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A. K. Singh | – | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | – | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | – | Deputy Secretary |
| 4. Smt. B. Visala | – | Deputy Secretary |

WITNESSES

Ministry of Planning

1. Ms. Sudha Pillai, Member-Secretary
2. Shri Pronab Sen, Pr. Adviser
3. Shri Chaman Kumar, Addl. Secretary & FA
4. Shri C. Muralikrishna Kumar, Sr. Adviser
5. Shri T.K. Pandey, Joint Secretary (Admn.)

Unique Identification Authority of India (UIDAI)

1. Shri Nandan Nilekani, Chairman
2. Shri R.S. Sharma, Director-General

2. The Committee took evidence of the representatives of the Ministry of Planning and Unique Identification Authority of India (UIDAI) in connection with the examination of the National Identification Authority of India Bill, 2010. Major issues discussed with the representatives included, need for providing statutory status to the Unique Identification Authority of India (UIDAI); Definition of 'Resident'; provision for de-activating the Aadhaar Number; collection of demographic information and biometric information; nature of enrolment and special measures for enrolment of weaker sections. The Chairman directed the representatives to furnish replies to the points raised during the sitting within one week.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

The Committee then adjourned.

MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Wednesday, the 29th June, 2011 from 1130 hrs to 1400 hrs.

PRESENT

Shri Bhartruhari Mahtab – Acting Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Bhakta Charan Das
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Mangani Lal Mandal
7. Shri Magunta Sreenivasulu Reddy
8. Dr. Kavuru Sambasiva Rao
9. Shri Sarvey Sathyanarayana
10. Shri Dharam Singh

RAJYA SABHA

11. Shri S.S. Ahluwalia
12. Shri Raashid Alvi
13. Shri Moinul Hassan

SECRETARIAT

- | | | |
|------------------------------|---|---------------------|
| 1. Shri A. K. Singh | – | Joint Secretary |
| 2. Shri R.K. Jain | – | Director |
| 3. Shri T. G. Chandrasekhar | – | Additional Director |
| 4. Shri Kulmohan Singh Arora | – | Under Secretary |

Part I

(1130 hrs. to 1145 hrs.)

2. In the absence of the Chairman, the Committee chose Shri Bhartruhari Mahtab, M.P. to chair the sitting under Rule 258(3) of the Rules of Procedure.

3. XX XX XX XX.
 XX XX XX XX.

Part II

(1145 hrs. to 1215 hrs.)

WITNESSES

National Human Rights Commission (NHRC)

- | | | | |
|----|-------------------|---|-----------------------|
| 1. | Shri Rajiv Sharma | - | Secretary-General |
| 2. | Shri A.K. Garg | - | Registrar (Law) |
| 3. | Shri J.P. Meena | - | Joint Secretary (P&A) |

4. The Committee heard the representatives of the National Human Rights Commission on "The National Identification Authority of India Bill, 2010". The major issues discussed during the sitting broadly related to nature, objective and beneficiaries of aadhaar number; possible discrimination and specific provisions that are required to be built in; safeguards needed for securing the stored information by the proposed National Identification Authority of India; implications of the provisions of the Bill on the individual's right to privacy, etc. The Chairman directed the representatives of the National Human Rights Commission to furnish replies to the points raised by the Members during the discussion within a week.

The witnesses then withdrew.

Part III

(1215 hrs. to 1300 hrs.)

WITNESSES

Indian Banks' Association (IBA)

- | | | | |
|----|---------------------|---|---------------------|
| 1. | Shri M.D. Mallya | - | Chairman |
| 2. | Dr. K. Ramakrishnan | - | Chief Executive |
| 3. | Shri M.R. Umarji | - | Chief Advisor-Legal |

5. Subsequently, the Committee heard the representatives of the Indian Banks' Association (IBA) on "The National Identification Authority of India Bill, 2010". The major issues discussed during the sitting broadly related to stipulations prescribed by the Ministry of Finance and the Reserve Bank of India for using aadhaar numbers for opening bank accounts; new account holders added through aadhaar numbers; and utility of aadhaar number in financial inclusion, social sector lending, etc. The Chairman directed the

representatives of Indian Banks' Association (IBA) to furnish replies to the points raised by the Members during the discussion within a week.

The witnesses then withdrew.

Part IV

(1300 hrs. to 1400 hrs.)

WITNESS

Dr. Reetika Khera, Visitor, Centre for Development Economics, Delhi School of Economics

6. The Committee then heard Dr. Reetika Khera, on "The National Identification Authority of India Bill, 2010". The major issues discussed broadly related to nature of Aadhaar number; existing ID proof documents and need for aadhaar number; usage and benefits of aadhaar number particularly in Mahatama Gandhi National Rural Employment Guarantee Scheme, Public Distribution System, implications of the UID programme; relevance of Report of London School of Economics on UK's Identity Act 2006 in the context of aadhaar number etc. The Chairman directed the expert to furnish replies to the points raised by the Members during the discussion within a week.

A verbatim record of the proceedings was kept.

The witness then withdrew

The Committee then adjourned at 1400 hours.

MINUTES OF THE TWENTY-SECOND SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Friday, the 29th July, 2011 from 1100 hrs to 1715 hrs.

PRESENT

Shri Yashwant Sinha – Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Dr. Kavuru Sambasiva Rao
9. Shri Manicka Tagore

RAJYA SABHA

10. Shri S.S. Ahluwalia
11. Shri Raashid Alvi
12. Shri Moinul Hassan
13. Shri Satish Chandra Misra
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

- | | | |
|---------------------------------|---|------------------|
| 1. Shri A. K. Singh | – | Joint Secretary |
| 2. Shri R.K. Jain | – | Director |
| 3. Shri Ramkumar Suryanarayanan | – | Deputy Secretary |
| 4. Shri Kulmohan Singh Arora | – | Under Secretary |

Part I

(1100 hrs. to 1130 hrs.)

2.	XX	XX	XX	XX.
	XX	XX	XX	XX.

Part II

(1130 hrs. to 1300 hrs.)

WITNESSES

3.	XX	XX	XX	XX.
	XX	XX	XX	XX.

The witnesses then withdrew.

Part III

(1400 hrs. to 1715 hrs.)

WITNESSES

Confederation of Indian Industry (CII)

1. Mr Arun Duggal,
Vice Chairman, International Asset Reconstruction Company (IARC)
and Chairman Shriram Capital Limited
2. Mr Chirag Jain,
Chief Operating Officer
Canara HSBC Oriental Bank of Commerce Life Insurance Company Limited
3. Mr Ravi Gandhi,
VP, Corporate Regulatory Affairs
Bharti Airtel
4. Mr Rameesh Kailasam,
Program Director
IBM India Pvt. Limited

4. The Committee heard the representatives of Confederation of Indian Industry (CII) in connection with examination of 'The National Identification Authority of India Bill, 2010'. The major issues discussed included, existing ID proof documents and the rationale and necessity of aadhaar number; usage, benefits and objects of aadhaar number; role of aadhaar number in planning and formulation of social policies; collection of biometric and demographic information; measures for enrolment of certain categories like persons with disability; exploration of alternate and economical identity system; opening up of Registrars and enrolment agencies to private sector; technological issues involved in the UID project; financial implications of the UID project; impact of the provisions of the Bill on the individual's right to privacy; potential of possible use of aadhaar numbers by illegal residents; lessons learnt from global practice and failures experienced in different countries in establishment of identity system similar to aadhaar number especially relevance of report of London School of Economics on UK Identity Act, 2006; legality of implementation of the UID project before the law is enacted by the Parliament;

making the penal provisions of the Bill in line with IT Act, 2000 etc. The Chairman directed the representatives of Confederation of Indian Industry (CII) to give suggestions clause-by-clause along-with the replies to the points raised by the Members within ten days.

The witnesses then withdrew.

WITNESSES

Experts

1. Dr. Usha Ramanathan,
Independent Law Researcher on the jurisprudence on Law,
Poverty and Rights, New Delhi
2. Dr. R. Ramakumar,
Associate Professor,
Tata Institute of Social Sciences, Mumbai
3. Shri Gopal Krishna,
Member, Citizen Forum for Civil Liberties, New Delhi

5. The Committee then heard the experts on "The National Identification Authority of India Bill, 2010". The major issues discussed broadly related to beneficiaries of aadhaar number including the eligibility of children; feasibility study on the UID project; costs and benefits analysis of the UID project; global experience in creation of a national data base of its citizens with biometrics; convergence of data, its usage and its consequences; functioning of the UIDAI under Executive order and implementation of the UID project before an enactment of law; impact of the provisions of the Bill on civil rights and liberties; implications of the provisions of the Bill on RTI Act, 2005; responsibilities of 'Introducer' and liability of the UIDAI; outsourcing of works by the UIDAI and its responsibilities; alternate system of identification etc. The Chairman directed the experts to furnish replies to the points raised by the Members during the discussion within ten to fifteen days.

A verbatim record of the proceedings was kept.

The witnesses then withdrew

The Committee then adjourned

Minutes of the Sixth sitting of the Standing Committee on Finance (2011-12)
 The Committee sat on Thursday, the 08th December, 2011 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha — **Chairman**

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Harishchandra Deoram Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Chandrakant Khair
7. Shri Bhartruhari Mahatab
8. Shri Prem Das Raj
9. Dr. Kavuru Sambasiva Rao
10. Shri Rayapati S. Rao
11. Shri Magunta Sreenivasulu Reddy
12. Shri G.M. Siddeswara
13. Shri Yashvir Singh
14. Shri R. Thamaraiselvan
15. Dr. M. Thambidurai

RAJYA SABHA

16. Shri S.S. Ahluwalia
17. Shri Raashid Alvi
18. Shri Vijay Jawaharlal Darda
19. Shri Moinul Hassan
20. Shri Satish Chandra Misra
21. Shri Mahendra Mohan
22. Dr. Mahendra Prasad
23. Dr. K.V.P. Ramachandra Rao
24. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A. K. Singh — Joint Secretary
2. Shri R.K. Jain — Director
3. Shri Ramkumar Suryanarayanan — Deputy Secretary

2. The Committee took up the following draft Reports for consideration and adoption:-

- (i) The Insurance Laws (Amendment) Bill, 2008;
- (ii) The National Identification Authority of India Bill, 2010; and
- (iii) The Banking Laws (Amendment) Bill, 2011.

3. The Committee adopted the above draft reports with some minor modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

The Committee then adjourned

ANNEXURE A-11

[4G Identity Solutions

Authentic people Unique Ids]

De-duplication

The Complexity in the Unique ID Context

1. Introduction

Citizens in India depend on the Government for various services at various stages of the human lifecycle. These services include issuance of birth certificate, voter identity card, ration card, driving license, passport, PAN card etc. In addition the government also implements different welfare schemes like Targeted Public Distribution System (TPDS), National Rural Employment Guarantee System (NREGS), health insurance, old age pensions etc for the economic and social upliftment of the people. A Unique Identity (UID) assigned for every citizen would obviate the need for a person to produce multiple documentary proofs of his identity for availing any government service, or private services like opening of a bank account. The Unique Identity (UID) would remain a permanent identifier right from birth to death of the citizen.

UID would enable government to ensure that benefits under various welfare programmes reach the intended beneficiaries, prevent cornering of benefits by a few people and minimize frauds. UIDs are also expected to be of help in law and order enforcement, effective implementation of the public distribution system, defining social welfare entitlements, financial inclusion and improving overall efficiency of the government administration.

2. Enrollment

It is expected that the Government will enroll the citizens by capturing the Biographic and Biometric details and issue a Unique ID number. During the enrollment process, it has to be ensured that the same citizen does not get enrolled more than once. This can be done by comparing the biometrics of the citizen with all other citizens already enrolled and denying enrollment in case a match is found. Enrollment of citizens can be done in two ways.

- (i) The enrollment can be done online by adopting a centralized architecture, in which all the enrollment stations in the country are connected to the central server and the biometrics of the citizen being enrolled are matched / compared with the biometrics of all the citizens

already enrolled. In case a match is found, the system will not allow enrollment to be done.

- (ii) The other way in which enrollment can be done is by adopting an offline enrollment method by synchronizing the data with the central server periodically as and when internet connectivity is available or through regular backup of data by means of DVDs / Hard disks. The biometrics of the citizens captured through the offline method are then matched / compared with the biometrics of all other enrolled citizens at the central server to identify multiple enrollments of the same citizen.

What is important in both the cases is the speed of matching and the accuracy of the matching results. The speed of matching has to be very high as the number of citizens to be enrolled runs into millions. The accuracy is equally important as false matches will result in erroneous enrollments, delays and potential failure of the project itself. It is to be noted that, during the enrollment, the raw images of the biometrics are captured and algorithms are used for converting the images into templates which are used for comparison/ matching. The speed of matching and accuracy of

matching depend on the biometric captured, the algorithm used and the matching engine deployed.

3. Biometrics

There are several Biometrics such as Fingerprints, Iris, Facial recognition, Hand Geometry, Signature, Voice patterns etc. which are being used by Governments all over the world for an extensive array of highly secure identification and personal verification solutions. Each of them has certain advantages and disadvantages which must be considered in developing biometric systems. Selecting the right biometric is critical to the success of any Identity Management project such as the Unique ID project. Key metrics that need to be evaluated for choosing a biometric include the stability of the biometric over the lifetime of a human being, Failure to Enroll (FTE) rate, False Accept Rate (FAR), and the False Reject Rate (FRR). It is important to understand the advantages and disadvantages of each biometric and the advantages of going in for Multimodal Biometric solutions.

4. Multi-Modal Biometrics

Multimodal biometrics refers to the use of a combination of two or more biometric modalities in a single identification system. Biometric systems based solely on one-modal biometrics are often not able to meet the desired performance requirements for large user population

applications, due to problems such as failure to enroll, noisy data, spoof attacks, environmental conditions and unacceptable error rates. Each of the biometrics has its' relative merits and applications where they can be used. A few examples are given below.

4.1. Face

The face can be the first form of identifying a person without the need for any external device; however, a facial recognition camera may not be able to distinguish between identical twins. Facial recognition works on the system identifying 9 geometric points on a human face and international studies have confirmed very high "False Acceptance Rates" (1 in 100).

4.2. Fingerprints

Fingerprints are ideal for verification (1:1 matching) though there are Automatic Fingerprint Identification Systems (AFIS) which do identification (1:N or N:N) also. However, even in the case of identification, the "False Acceptance Rates" are about 1:100,000.

- Fingerprint de-duplication is cost effective only for small population and the cost of de-duplication goes up significantly due to manual intervention required while doing de-duplication for huge population. This is due to large number of false matches thrown up during the fingerprint de-duplication process requiring

Human intervention / Back office operations to work on the probable matches and thereby adding up to the costs;

- Fingerprints are susceptible to noisy or bad data, such as inability of a scanner to read dirty fingerprints clearly. People above 60 years and young children below 12 years may have difficulty enrolling in a fingerprinting system, due to their faded prints or underdeveloped fingerprint ridges. It is estimated that approximately 5 percent of any population has unreadable fingerprints, either due to scars or aging or illegible prints. In the Indian environment, experience has shown that the failure to enroll is as high as 15% due to the prevalence of a huge population dependent on manual labor.

However, the advantages of fingerprints are given below

- Fingerprint is cost effective at the time of verification. (Since at verification or the point of service, fingerprint devices of low cost can be used.)
- Fingerprint can be used for forensic purposes.

4.3. Iris

- Iris recognition is the most accurate of the top three biometrics: fingerprints, facial recognition, and iris recognition. Iris

recognition has a false accept rate of 1 in 1.2 million for one eye (1 in 1.44 trillion for two eyes) regardless of database size. As a result of the accuracy of Iris recognition, Iris returns a single result back. Fingerprint and face technologies generally return a candidate list and then a manual process is required for resolving the candidate list. For this reason, Iris is the ideal biometric for applications which require real time identification. Processes such as fraud screen (to check for duplicates) enrollment for large populations can be easily handled by Iris recognition where they are very difficult for fingerprints.

- Iris recognition algorithms can search upto 20 million records in less than one second using a normal Quadcore – 2 Processor blade server. In a parallel process, using COTS hardware, Iris can perform at 1 billion matches per second. The ability to search a population database in real time and return a single match result is unique to Iris recognition technology. Due to manual candidate list resolution with face and fingerprint technologies, Iris is the only biometric which delivers operational results in real time which can be acted upon.
- Iris is an internal organ because of which there is no problem of environmental conditions affecting the Iris unlike fingerprints

which may not be prominent in people who do labor work or work in harsh environments (e.g factories, farms, etc).

- The Iris of a person is stable throughout a person's life (From the age of one year till death); the physical characteristics of the Iris do not change with age, diseases or environmental conditions. Hence one time enrollment is enough for a person during his lifetime.

- One of the most important advantages of using Iris as a Biometric is the lower effort, lesser infrastructure (servers, database licenses, datacenter infrastructure etc) required for deduplication, whereas finger print deduplication requires more than 50 times infrastructure and more human effort. Another related cost that is normally overlooked is the infrastructure maintenance cost for running such as huge datacenter like, manpower, power consumption, annual maintenance costs for hardware and software etc.

- A comparative study of the performance of multiple biometrics done by the centre for Mathematics and Scientific Computing, National Physical Laboratory NPL of UK is given in the Table 1.

Table 1

Biometric	FAR (False Acceptance Rate)	FRR (False Rejection Rate)	FER (Failure to Enroll rate)	Scalability	Stability
Iris	1:1.2 million	0.1 – 0.2%	0.5%	1: all search	Very stable
Fingerprint	1:100000	2.0-3.0%	1.0- 2.0%	1:1 match	Changes
Hand Geometry	1:10000	10 -20%	0.0%	1:1 match	Changes

For complete Report Please Refer - Biometric Product Testing Final Report (19 March 2001, Center for Mathematics and Scientific Computing, National Physical Laboratory, UK).

The most compelling reason to adopt Multi-Modal Biometric is to introduce certainty in the recognition process, real time identification, lower effort for de-duplication and reduce the possibility of inconvenience caused by malfunctioning of a single Biometric.

Advantages of using Multi-Modal Biometrics

- The enrollment cost for Multi-Modal Biometric enrollment will be about 5 – 10% marginally higher compared to single/dual biometric enrollment. However, the total cost of solution in case of multimodal enrollment is significantly reduced due to reduced

cost during de-duplication which outweighs the marginal additional cost incurred during enrollment.

- Single biometric enrollment results in Failure to Enroll (FTE) if those biometric characteristics are absent in a citizen or if they are not qualified for enrollment (due to scars, aging or illegible/ worn out / cut / unrecognizable in case of fingerprints). In Indian conditions, where more than 60% of the population is involved in manual labour, experience has shown very high FTE rates for fingerprints.

5. De-duplication

De-duplication is the processing of the biometric data of citizens to remove instances of multiple enrollments by the same citizen. During de-duplication, matching the biometrics of a citizen is done against the biometrics of other citizens to ensure that the same person is not enrolled more than once. This will ensure that each person will have a unique identity. De-duplication will be a necessary component in the "Unique ID" project. De-duplication is discussed in the context of the two different enrollment scenarios which are given below.

Case I: Enrollment using a centralized architecture

In the case of enrollment using a centralized architecture, the biometrics of the citizen have to be matched against the biometrics of all the previously enrolled citizens. The matching has to be done soon after the biometrics are captured to check whether the same citizen has been enrolled earlier. In case a match is found, the citizen will not be enrolled into the system. To accomplish this, the speed of matching has to be very high and without any false accepts. To illustrate the complexity, let us take a case where 200 million citizens have already been enrolled, and a new citizen is now waiting to be enrolled into the system at the enrollment station.

(1) When Fingerprints are used as the Biometric.

The number of matches to be performed and the time taken is shown in the table below.

Scenario	No of matches	Time taken (Assuming 10 blade servers with a total matching capacity of 5 million per sec)
No. of matches if 1 finger (say left thumb) is matched against all left thumbs of previously enrolled citizens	200 million	40 secs
No. of matches if all 10 fingers are matched against the respective fingers of all the previously enrolled citizens	2000 million	400 secs (6.67 minutes)
No. of matches if all the 10	20000	4000 secs

fingers are matched against all the fingers of all the previously enrolled citizens	million	(1.11 hours)
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(2) *When Iris is used as the Biometric.*

The number of matches to be performed and the time taken is shown in the table below.

Scenario	No of matches	Time taken (Assuming 10 blade servers with a total matching capacity of 200 million per sec)
No. of matches if 1 eye (say left eye) against all left eyes of previously enrolled citizens	200 million	1 sec
No. of matches if both eyes are matched against the respective eyes of all the previously enrolled citizens	400 million	2 secs
No. of matches if both eyes are matched against both eyes of all the previously enrolled citizens.	800 million	4 secs

Thus it can be seen that the Iris based online enrollment is many times faster compared to the fingerprint based enrollment. Moreover, the fingerprint based De-duplication throws up false matches which have to be crosschecked with the photo or other parameters before deciding the accuracy of the match.

Case II: Enrollment using a De-centralized architecture

In the case of enrollment using a De-centralized architecture, the biometrics of citizens captured during a certain period have to be matched against the unique ID enrollment database of all the previously enrolled citizens. The matching has to be done by aggregating the data from each of the decentralized enrollment stations and matching against the de-duplicated biometrics of all the previously enrolled citizens. To illustrate the complexity, let us take the case where 200 million citizens have already been enrolled, and a data of 1 million citizens has been aggregated from the enrollment stations. The data of the 1 million citizens will have to be matched against the 200 million citizens to avoid multiple enrollments.

(1) When Fingerprints are used as the Biometric.

The number of matches to be performed and the time taken is shown in the table below.

Scenario	No of matches	Time taken (Assuming 10 blade servers with a total matching capacity of 5 million per sec)
No. of matches if 1 finger (say left thumb) against all left thumbs of previously enrolled citizens	200 trillion	463 days Or 1.27 years
No. of matches if all 10 fingers are	2000 trillion	4630 days Or 12.67 years

matched against the respective fingers of all the previously enrolled citizens		
No. of matches if all the 10 fingers are matched against all the fingers of all the previously enrolled citizens	20000 trillion	46296 days Or 126.84 years

(2) When Iris is used as the Biometric.

The number of matches to be performed and the time taken is shown in the table below.

Scenario	No of matches	Time taken (Assuming 10 blade servers with a total matching capacity of 200 million per sec)
No of matches if 1 eye (say left eye) against all left eyes of previously enrolled citizens	200 trillion	11.57 days
No of matches if both eyes are matched against the respective eyes of all the previously enrolled citizens	400 trillion	23.15 days
No of matches both eyes are matched against both eyes of all the previously enrolled citizens	800 trillion	46.30 days

It can thus be seen that the de-centralised enrollment will lead to large de-duplication times. By increasing the number of servers, it is possible to do the de-duplication within a day. To achieve the same timelines

using fingerprints, it would take 50 times the number of servers adopted for Iris based De-duplication. In addition to the increase in timelines and hardware, the number of false matches thrown up in Fingerprint based De-duplication would require large manpower to use other comparisons such as photos to eliminate the false matches.

6. Conclusion

Choosing the right biometrics plays a very important role for ensuring the success of the Unique ID project. While Iris as a biometric ensures high matching speeds and high degree of accuracy which are very essential for large Unique ID projects, fingerprint as a biometric will be economical for verification at the Point of Service. Thus the use of Multi-Modal biometrics will enable Governments to reap the advantages of both in the most optimal manner.

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[G.R. No. 127685. July 23, 1998]

BLAS F. OPLE, *petitioner*, vs. RUBEN D. TORRES, ALEXANDER AGUIRRE, HECTOR VILLANUEVA, CIELITO HABITO, ROBERT BARBERS, CARMENCITA REODICA, CESAR SARINO, RENATO VALENCIA, TOMAS P. AFRICA, HEAD OF THE NATIONAL COMPUTER CENTER and CHAIRMAN OF THE COMMISSION ON AUDIT, *respondents*.

DECISION

PUNO, J.:

The petition at bar is a commendable effort on the part of Senator Blas F. Ople to prevent the shrinking of the right to privacy, which the revered Mr. Justice Brandeis considered as "the most comprehensive of rights and the right most valued by civilized men."¹ Petitioner Ople prays that we invalidate Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" on two important constitutional grounds, viz: one, it is a usurpation of the power of Congress to legislate, and two, it impermissibly intrudes on our citizenry's protected zone of privacy. We grant the petition for the rights sought to be vindicated by the petitioner need stronger barriers against further erosion.

A.O. No. 308 was issued by President Fidel V. Ramos on December 12, 1996 and reads as follows:

**"ADOPTION OF A NATIONAL COMPUTERIZED IDENTIFICATION
REFERENCE SYSTEM**

WHEREAS, there is a need to provide Filipino citizens and foreign residents with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities;

WHEREAS, this will require a computerized system to properly and efficiently identify persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations;

WHEREAS, a concerted and collaborative effort among the various basic services and social security providing agencies and other government

instrumentalities is required to achieve such a system;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby direct the following:

SECTION 1. Establishment of a National Computerized Identification Reference System. A decentralized Identification Reference System among the key basic services and social security providers is hereby established.

SEC. 2 Inter-Agency Coordinating Committee. An Inter-Agency Coordinating Committee (IACC) to draw-up the implementing guidelines and oversee the implementation of the System is hereby created, chaired by the Executive Secretary, with the following as members:

Head, Presidential Management Staff

Secretary, National Economic Development Authority

Secretary, Department of the Interior and
Local Government

Secretary, Department of Health

Administrator, Government Service Insurance
System,

Administrator, Social Security System, Administrator,
National Statistics Office Managing Director, National
Computer Center.

SEC. 3. Secretariat. The National Computer Center (NCC) is hereby designated as secretariat to the IACC and as such shall provide administrative and technical support to the IACC.

SEC. 4. Linkage Among Agencies. The Population Reference Number (PRN) generated by the NSO shall serve as the common reference number to establish a linkage among concerned agencies. The IACC Secretariat shall coordinate with the different Social Security and Services Agencies to establish the standards in the use of Biometrics Technology and in computer application designs of their respective systems.

SEC. 5. Conduct of Information Dissemination Campaign. The Office of the Press Secretary, in coordination with the National Statistics Office, the GSIS and SSS as lead agencies and other concerned agencies shall undertake a massive tri-media information dissemination campaign to educate and raise public awareness on the importance and use of the PRN and the Social Security Identification Reference.

SEC. 6. Funding. The funds necessary for the implementation of the system shall be sourced from the respective budgets of the concerned agencies.

SEC. 7. *Submission of Regular Reports.* The NSO, GSIS and SSS shall submit regular reports to the Office of the President, through the IACC, on the status of implementation of this undertaking.

SEC. 8. *Effectivity.* This Administrative Order shall take effect immediately.

DONE in the City of Manila, this 12th day of December in the year of Our Lord, Nineteen Hundred and Ninety-Six.

(SGD.) FIDEL V. RAMOS"

A.O. No. 308 was published in four newspapers of general circulation on January 22, 1997 and January 23, 1997. On January 24, 1997, petitioner filed the instant petition against respondents, then Executive Secretary Ruben Torres and the heads of the government agencies, who as members of the Inter-Agency Coordinating Committee, are charged with the implementation of A.O. No. 308. On April 8, 1997, we issued a temporary restraining order enjoining its implementation.

Petitioner contends:

"A. THE ESTABLISHMENT OF A NATIONAL COMPUTERIZED IDENTIFICATION REFERENCE SYSTEM REQUIRES A LEGISLATIVE ACT. THE ISSUANCE OF A.O. NO. 308 BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES IS, THEREFORE, AN UNCONSTITUTIONAL USURPATION OF THE LEGISLATIVE POWERS OF THE CONGRESS OF THE REPUBLIC OF THE PHILIPPINES.

B. THE APPROPRIATION OF PUBLIC FUNDS BY THE PRESIDENT FOR THE IMPLEMENTATION OF A.O. NO. 308 IS AN UNCONSTITUTIONAL USURPATION OF THE EXCLUSIVE RIGHT OF CONGRESS TO APPROPRIATE PUBLIC FUNDS FOR EXPENDITURE.

C. THE IMPLEMENTATION OF A.O. NO. 308 INSIDIOUSLY LAYS THE GROUNDWORK FOR A SYSTEM WHICH WILL VIOLATE THE BILL OF RIGHTS ENSHRINED IN THE CONSTITUTION."^[2]

Respondents counter-argue:

A. THE INSTANT PETITION IS NOT A JUSTICIABLE CASE AS WOULD WARRANT A JUDICIAL REVIEW;

B. A.O. NO. 308 [1996] WAS ISSUED WITHIN THE EXECUTIVE AND ADMINISTRATIVE POWERS OF THE PRESIDENT WITHOUT ENCROACHING ON THE LEGISLATIVE POWERS OF CONGRESS;

C. THE FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE IDENTIFICATION REFERENCE SYSTEM MAY BE SOURCED FROM THE

BUDGETS OF THE CONCERNED AGENCIES;

D. A.O. NO. 308 [1996] PROTECTS AN INDIVIDUAL'S INTEREST IN PRIVACY.^[3]

We now resolve.

I

As is usual in constitutional litigation, respondents raise the threshold issues relating to the standing to sue of the petitioner and the justiciability of the case at bar. More specifically, respondents aver that petitioner has no legal interest to uphold and that the implementing rules of A.O. No. 308 have yet to be promulgated.

These submissions do not deserve our sympathetic ear. Petitioner Ople is a distinguished member of our Senate. As a Senator, petitioner is possessed of the requisite standing to bring suit raising the issue that the issuance of A.O. No. 308 is a usurpation of legislative power.^[4] As taxpayer and member of the Government Service Insurance System (GSIS), petitioner can also impugn the legality of the misalignment of public funds and the misuse of GSIS funds to implement A.O. No. 308.^[5]

The ripeness for adjudication of the petition at bar is not affected by the fact that the implementing rules of A.O. No. 308 have yet to be promulgated. Petitioner Ople assails A.O. No. 308 as invalid per se and as infirmed on its face. His action is not premature for the rules yet to be promulgated cannot cure its fatal defects. Moreover, the respondents themselves have started the implementation of A.O. No. 308 without waiting for the rules. As early as January 19, 1997, respondent Social Security System (SSS) caused the publication of a notice to bid for the manufacture of the National Identification (ID) card.^[6] Respondent Executive Secretary Torres has publicly announced that representatives from the GSIS and the SSS have completed the guidelines for the national identification system.^[7] All signals from the respondents show their unswerving will to implement A.O. No. 308 and we need not wait for the formality of the rules to pass judgment on its constitutionality. In this light, the dissenters insistence that we tighten the rule on standing is not a commendable stance as its result would be to throttle an important constitutional principle and a fundamental right.

II

We now come to the core issues. Petitioner claims that A.O. No. 308 is not a mere administrative order but a law and hence, beyond the power of the President to issue. He alleges that A.O. No. 308 establishes a system of identification that is all-encompassing in scope, affects the life and liberty of every Filipino citizen and foreign resident, and more particularly, violates their right to privacy.

Petitioner's sedulous concern for the Executive not to trespass on the

lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a **stricter scrutiny** by this Court.

The line that delineates Legislative and Executive power is not indistinct. **Legislative power** is "the authority, under the Constitution, to make laws, and to alter and repeal them."^[10] The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines.^[9] The grant of legislative power to Congress is broad, general and comprehensive.^[10] The legislative body possesses plenary power for all purposes of civil government.^[11] Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere.^[12] In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.^[13]

While Congress is vested with the power to enact laws, **the President executes the laws**.^[14] The executive power is vested in the President.^[15] It is generally defined as the power to enforce and administer the laws.^[16] It is the power of carrying the laws into practical operation and enforcing their due observance.^[17]

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department.^[18] He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials.^[19] Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted **administrative power** over bureaus and offices under his control to enable him to discharge his duties effectively.^[20]

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.^[21] It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents.^[22] To this end, he can issue administrative orders, rules and regulations.

Prescinding from these precepts, we hold that A.O. No. 308 involves a subject that is not appropriate to be covered by an administrative order. An administrative order is:

"Sec. 3. *Administrative Orders*.-- Acts of the President which relate to

particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."^[23]

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. **It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy.**^[24] We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of 1987. The Code is a general law and "incorporates in a unified document the major structural, functional and procedural principles of governance"^[25] and "embodies changes in administrative structures and procedures designed to serve the people."^[26] The Code is divided into seven (7) Books: Book I deals with Sovereignty and General Administration, Book II with the Distribution of Powers of the three branches of Government, Book III on the Office of the President, Book IV on the Executive Branch, Book V on the Constitutional Commissions, Book VI on National Government Budgeting, and Book VII on Administrative Procedure. These Books contain provisions on the organization, powers and general administration of the executive, legislative and judicial branches of government, the organization and administration of departments, bureaus and offices under the executive branch, the organization and functions of the Constitutional Commissions and other constitutional bodies, the rules on the national government budget, as well as guidelines for the exercise by administrative agencies of quasi-legislative and quasi-judicial powers. The Code covers both the internal administration of government, i.e., internal organization, personnel and recruitment, supervision and discipline, and the effects of the functions performed by administrative officials on private individuals or parties outside government.^[27]

It cannot be simplistically argued that A.O. No. 308 merely implements the Administrative Code of 1987. It establishes for the first time a National Computerized Identification Reference System. Such a System requires a delicate adjustment of various contending state policies-- the primacy of national security, the extent of privacy interest against dossier-gathering by government, the choice of policies, etc. Indeed, the dissent of Mr. Justice Mendoza states that the A.O. No. 308 involves the all-important freedom of thought. As said administrative order redefines the parameters of some basic rights of our citizenry vis-a-vis the State as well as the line that separates the administrative power of the President to make rules and the legislative power of Congress, it ought to be evident that it deals with a subject that should be covered by law.

Nor is it correct to argue as the dissenters do that A.O. No. 308 is not a law because it confers no right, imposes no duty, affords no protection, and creates no office. Under A.O. No. 308, a citizen cannot transact business with government agencies delivering basic services to the people without the contemplated identification card. No citizen will refuse to get this identification

card for no one can avoid dealing with government. It is thus clear as daylight that without the ID, a citizen will have difficulty exercising his rights and enjoying his privileges. Given this reality, the contention that A.O. No. 308 gives no right and imposes no duty cannot stand.

Again, with due respect, the dissenting opinions unduly expand the limits of administrative legislation and consequently erodes the plenary power of Congress to make laws. This is contrary to the established approach defining the traditional limits of administrative legislation. As well stated by Fisher: "x x x **Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws.**"^[28]

III

Assuming, arguendo, that A.O. No. 308 need not be the subject of a law, still it cannot pass constitutional muster as an administrative legislation because facially it violates the right to privacy. The essence of privacy is the "right to be let alone."^[29] In the 1965 case of **Griswold v. Connecticut**,^[30] the United States Supreme Court gave more substance to the right of privacy when it ruled that the right has a constitutional foundation. It held that there is a right of privacy which can be found within the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments,^[31] viz:

"Specific guarantees in the Bill of Rights have penumbras formed by emanations from these guarantees that help give them life and substance x x x. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'"

In the 1968 case of **Morfe v. Mutuc**,^[32] we adopted the **Griswold** ruling that **there is a constitutional right to privacy**. Speaking thru Mr. Justice, later Chief Justice, Enrique Fernando, we held:

"xxx

The Griswold case invalidated a Connecticut statute which made the use of contraceptives a criminal offense on the ground of its amounting to an unconstitutional invasion of the right of privacy of married persons; rightfully it stressed "a relationship lying within the zone of privacy created by several fundamental constitutional guarantees." It has wider implications though. The constitutional right to privacy has come into its own.

So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: 'The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector-- protection, in other words, of the dignity and integrity of the individual--has become increasingly important as modern society has developed. All the forces of a technological age -- industrialization, urbanization, and organization-- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.'"

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions of our Constitution.^[33] It is expressly recognized in Section 3(1) of the Bill of Rights:

"Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."

Other facets of the right to privacy are protected in various provisions of the **Bill of Rights**, viz:^[34]

"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

X

X

X.

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

X

X

X.

Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Sec. 17. No person shall be compelled to be a witness against himself."

Zones of privacy are likewise recognized and protected in our laws. The **Civil Code** provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another.^[35] It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person,^[36] and recognizes the privacy of letters and other private communications.^[37] The **Revised Penal Code** makes a crime the violation of secrets by an officer,^[38] the revelation of trade and industrial secrets,^[39] and trespass to dwelling.^[40] Invasion of privacy is an offense in **special laws** like the Anti-Wiretapping Law,^[41] the Secrecy of Bank Deposit Act^[42] and the Intellectual Property Code.^[43] The **Rules of Court** on privileged communication likewise recognize the privacy of certain information.^[44]

Unlike the dissenters, we prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: (1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. **But what is not arguable is the broadness, the vagueness, the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger.**

The heart of A.O. No. 308 lies in its Section 4 which provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics Technology" and "computer application designs."

Biometry or biometrics is "the science of the application of statistical methods to biological facts; a mathematical analysis of biological data."^[45] The term "**biometrics**" has now evolved into a broad category of technologies which provide precise confirmation of an individual's identity through the use of the individual's own physiological and behavioral characteristics.^[46] A **physiological characteristic** is a relatively stable physical characteristic such as a fingerprint, retinal scan, hand geometry or facial features. A **behavioral characteristic** is influenced by the individual's personality and includes voice print, signature and keystroke.^[47] Most biometric identification systems use a card or personal identification number (PIN) for initial identification. The biometric measurement is used to verify that the individual holding the card or entering the PIN is the legitimate owner of the card or PIN.^[48]

A most **common form** of biological encoding is **finger-scanning** where technology scans a fingertip and turns the unique pattern therein into an individual number which is called a biocrypt. The **biocrypt** is stored in computer data banks^[49] and becomes a means of identifying an individual using a service. This technology requires one's fingertip to be scanned every time service or access is provided.^[50] Another method is the **retinal scan**. Retinal scan technology employs optical technology to map the capillary pattern of the retina of the eye. This technology produces a unique print similar to a finger print.^[51] Another biometric method is known as the "**artificial nose**." This device chemically analyzes the unique combination of substances excreted from the skin of people.^[52] The latest on the list of biometric achievements is the **thermogram**. Scientists have found that by taking pictures of a face using infra-red cameras, a unique heat distribution pattern is seen. The different densities of bone, skin, fat and blood vessels all contribute to the individual's personal "heat signature."^[53]

In the last few decades, technology has progressed at a galloping rate. Some science fictions are now science facts. **Today, biometrics is no longer limited to the use of fingerprint to identify an individual.** It is a new science that uses various technologies in encoding any and all biological characteristics of an individual for identification. **It is noteworthy that A.O. No. 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage.** Considering the banquet of options available to the implementors of A.O. No. 308, the fear that it threatens the right to privacy of our people is not groundless.

A.O. No. 308 should also raise our antennas for a further look will show that it does not state whether encoding of data is limited to biological information alone for identification purposes. In fact, the Solicitor General claims that the adoption of the Identification Reference System will contribute to the "generation of population data for development planning."^[54] This is an admission that the PRN will not be used solely for

identification but for the generation of other data with remote relation to the avowed purposes of A.O. No. 308. **Clearly, the indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.**

The potential for misuse of the data to be gathered under A.O. No. 308 cannot be underplayed as the dissenters do. Pursuant to said administrative order, an individual must present his PRN everytime he deals with a government agency to avail of basic services and security. His transactions with the government agency will necessarily be recorded--whether it be in the computer or in the documentary file of the agency. The individual's file may include his transactions for loan availments, income tax returns, statement of assets and liabilities, reimbursements for medication, hospitalization, etc. **The more frequent the use of the PRN, the better the chance of building a huge and formidable information base through the electronic linkage of the files.^[55]** The data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist.^[56]

We can even grant, arguendo, that the computer data file will be limited to the name, address and other basic personal information about the individual.^[57] Even that hospitable assumption will not save A.O. No. 308 from constitutional infirmity **for again said order does not tell us in clear and categorical terms how these information gathered shall be handled. It does not provide who shall control and access the data, under what circumstances and for what purpose.** These factors are essential to safeguard the privacy and guaranty the integrity of the information.^[58] Well to note, the computer linkage gives other government agencies access to the information. **Yet, there are no controls to guard against leakage of information.** When the access code of the control programs of the particular computer system is broken, an intruder, without fear of sanction or penalty, can make use of the data for whatever purpose, or worse, manipulate the data stored within the system.^[59]

It is plain and we hold that A.O. No. 308 falls short of assuring that personal information which will be gathered about our people will only be processed for **unequivocally specified purposes.^[60]** The lack of proper safeguards in this regard of A.O. No. 308 may interfere with the individual's liberty of abode and travel by enabling authorities to track down his movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for "fishing expeditions" by government authorities and evade the right against unreasonable searches and seizures.^[61] **The possibilities of abuse and misuse of the PRN, biometrics and computer technology are**

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accentuated when we consider that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded.^[62] They threaten the very abuses that the Bill of Rights seeks to prevent.^[63]

The ability of a sophisticated data center to generate a comprehensive **cradle-to-grave dossier** on an individual and transmit it over a national network is one of the most graphic threats of the computer revolution.^[64] The computer is capable of producing a comprehensive dossier on individuals out of information given at different times and for varied purposes.^[65] It can continue adding to the stored data and keeping the information up to date. Retrieval of stored data is simple. When information of a privileged character finds its way into the computer, it can be extracted together with other data on the subject.^[66] Once extracted, the information is putty in the hands of any person. The end of privacy begins.

Though A.O. No. 308 is undoubtedly not narrowly drawn, the dissenting opinions would dismiss its danger to the right to privacy as speculative and hypothetical. Again, we cannot countenance such a laidback posture. The Court will not be true to its role as the ultimate guardian of the people's liberty if it would not immediately smother the sparks that endanger their rights but would rather wait for the fire that could consume them.

We reject the argument of the Solicitor General that an individual has a reasonable expectation of privacy with regard to the National ID and the use of biometrics technology as it stands on quicksand. The reasonableness of a person's expectation of privacy depends on a two-part test: (1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable.^[67] The factual circumstances of the case determines the reasonableness of the expectation.^[68] However, other factors, such as customs, physical surroundings and practices of a particular activity, may serve to create or diminish this expectation.^[69] The use of biometrics and computer technology in A.O. No. 308 does not assure the individual of a reasonable expectation of privacy.^[70] As technology advances, the level of reasonably expected privacy decreases.^[71] The measure of protection granted by the reasonable expectation diminishes as relevant technology becomes more widely accepted.^[72] The security of the computer data file depends not only on the physical inaccessibility of the file but also on the advances in hardware and software computer technology. **A.O. No. 308 is so widely drawn that a minimum standard for a reasonable expectation of privacy, regardless of technology used, cannot be inferred from its provisions.**

The rules and regulations to be drawn by the IACC cannot remedy this fatal defect. Rules and regulations merely implement the policy of the law or order. On its face, A.O. No. 308 gives the IACC virtually unfettered discretion to determine the metes and bounds of the ID System.

Nor do our present laws provide adequate safeguards for a reasonable expectation of privacy. Commonwealth Act No. 591 penalizes the disclosure by any person of data furnished by the individual to the NSO with imprisonment and fine.^[73] Republic Act No. 1161 prohibits public disclosure of SSS employment records and reports.^[74] These laws, however, apply to records and data with the NSO and the SSS. It is not clear whether they may be applied to data with the other government agencies forming part of the National ID System. The need to clarify the penal aspect of A.O. No. 308 is another reason why its enactment should be given to Congress.

Next, the Solicitor General urges us to validate A.O. No. 308's abridgment of the right of privacy by using the **rational relationship test**.^[75] He stressed that the purposes of A.O. No. 308 are: (1) to streamline and speed up the implementation of basic government services, (2) eradicate fraud by avoiding duplication of services, and (3) generate population data for development planning. He concludes that these purposes justify the incursions into the right to privacy for the means are rationally related to the end.^[76]

We are not impressed by the argument. In **Morfe v. Mutuc**,^[77] we upheld the constitutionality of R.A. 3019, the Anti-Graft and Corrupt Practices Act, as a valid police power measure. We declared that the law, in compelling a public officer to make an annual report disclosing his assets and liabilities, his sources of income and expenses, did not infringe on the individual's right to privacy. The law was enacted to promote morality in public administration by curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.^[78]

The same circumstances do not obtain in the case at bar. For one, R.A. 3019 is a statute, not an administrative order. Secondly, R.A. 3019 itself is sufficiently detailed. The law is clear on what practices were prohibited and penalized, and it was narrowly drawn to avoid abuses. In the case at bar, A.O. No. 308 may have been impelled by a worthy purpose, but, it cannot pass constitutional scrutiny for it is not narrowly drawn. **And we now hold that when the integrity of a fundamental right is at stake, this court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is it enough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of compelling state interests and that the law, rule, or regulation is narrowly drawn to preclude abuses.** This approach is demanded by the 1987 Constitution whose entire matrix is designed to protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution.

The case of **Whalen v. Roe**^[79] cited by the Solicitor General is also offline. In **Whalen**, the United States Supreme Court was presented with the

question of whether the State of New York could keep a centralized computer record of the names and addresses of all persons who obtained certain drugs pursuant to a doctor's prescription. The New York State Controlled Substances Act of 1972 required physicians to identify patients obtaining prescription drugs enumerated in the statute, i.e., drugs with a recognized medical use but with a potential for abuse, so that the names and addresses of the patients can be recorded in a centralized computer file of the State Department of Health. The plaintiffs, who were patients and doctors, claimed that some people might decline necessary medication because of their fear that the computerized data may be readily available and open to public disclosure; and that once disclosed, it may stigmatize them as drug addicts.^[80] The plaintiffs alleged that the statute invaded a constitutionally protected zone of privacy, i.e., the individual interest in avoiding disclosure of personal matters, and the interest in independence in making certain kinds of important decisions. The U.S. Supreme Court held that while an individual's interest in avoiding disclosure of personal matters is an aspect of the right to privacy, the statute did not pose a grievous threat to establish a constitutional violation. The Court found that the statute was necessary to aid in the enforcement of laws designed to minimize the misuse of dangerous drugs. **The patient-identification requirement was a product of an orderly and rational legislative decision made upon recommendation by a specially appointed commission which held extensive hearings on the matter. Moreover, the statute was narrowly drawn and contained numerous safeguards against indiscriminate disclosure.** The statute laid down the procedure and requirements for the gathering, storage and retrieval of the information. It enumerated who were authorized to access the data. It also prohibited public disclosure of the data by imposing penalties for its violation. In view of these safeguards, the infringement of the patients' right to privacy was justified by a valid exercise of police power. As we discussed above, A.O. No. 308 lacks these vital safeguards.

Even while we strike down A.O. No. 308, we spell out in neon that the Court is not per se against the use of computers to accumulate, store, process, retrieve and transmit data to improve our bureaucracy. Computers work wonders to achieve the efficiency which both government and private industry seek. Many information systems in different countries make use of the computer to facilitate important social objectives, such as better law enforcement, faster delivery of public services, more efficient management of credit and insurance programs, improvement of telecommunications and streamlining of financial activities.^[81] Used wisely, data stored in the computer could help good administration by making accurate and comprehensive information for those who have to frame policy and make key decisions.^[82] The benefits of the computer has revolutionized information technology. It developed the internet,^[83] introduced the concept of cyberspace^[84] and the information superhighway where the individual, armed only with his personal computer, may surf and search all kinds and classes of information from libraries and databases connected to the net.

In no uncertain terms, we also underscore that the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be narrowly focused^[85] and a compelling interest justify such intrusions.^[86] Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny. The reason for this stance was laid down in **Morfe v. Mutuc**, to wit:

"The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector-- protection, in other words, of the dignity and integrity of the individual-- has become increasingly important as modern society has developed. All the forces of a technological age-- industrialization, urbanization, and organization-- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."^[87]

IV

The right to privacy is one of the most threatened rights of man living in a mass society. The threats emanate from various sources-- governments, journalists, employers, social scientists, etc.^[88] In the case at bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. **Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens.** It is timely to take note of the well-worded warning of Calvin, Jr., "the disturbing result could be that everyone will live burdened by an unerasable record of his past and his limitations. In a way, the threat is that because of its record-keeping, the society will have lost its benign capacity to forget."^[89] Oblivious to this counsel, the dissents still say we should not be too quick in labelling the right to privacy as a fundamental right. We close with the statement that the right to privacy was not engraved in our Constitution for flattery.

IN VIEW WHEREOF, the petition is granted and Administrative Order No.

308 entitled "Adoption of a National Computerized Identification Reference System" declared null and void for being unconstitutional.

SO ORDERED.

Narvasa, C.J., Melo, and Quisumbing, JJ., joins J. Kapunan and J. Mendoza in their dissents.

Regalado, J., in the result.

Davide, Jr., in the result; joins J. Panganiban in his separate opinion.

Romero, Vitug and Panganiban, JJ., see separate opinion.

Kapunan, and Mendoza, JJ., see dissenting opinion.

Bellosillo, and Martinez, JJ., concur.

Purisima, J., joins J. Mendoza's dissent.

[1] Dissenting Opinion of Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438, 478 [1928].

[2] Petition, p. 9, Rollo, p. 11.

[3] Comment, pp. 6, 9, 14, 15, Rollo, pp. 65, 68, 73-74.

[4] *Philconsa v. Enriquez*, 235 SCRA 506 [1994]; *Guingona v. PCGG*, 207 SCRA 659 [1992]; *Tolentino v. Commission on Elections*, 41 SCRA 702 [1971].

[5] *Sanidad v. Commission on Elections*, 73 SCRA 333 [1976]; *Pascual v. Secretary of Public Works*, 110 Phil. 331 [1960].

[6] "Invitation to Bid," Annex "E" to the Petition, Rollo, p. 50.

[7] Annex "B" to Petitioner's Reply, Rollo, p. 144.

[8] *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 276 [1927].

[9] Section 1, Article VI, 1987 Constitution

[10] Fernando, *The Philippine Constitution*, pp. 175-176 [1974].

[11] *Id.*, at 177; citing the concurring opinion of Justice Laurel in *Schneckenburger v. Moran*, 63 Phil. 249, 266 [1936].

[12] *Vera v. Avelino*, 77 Phil. 192, 212 [1936].

[13] See concurring opinion of Justice Laurel in *Schneckenburger v. Moran*, *supra*, at 266-267.

[14] *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 305 [1927].

[15] Section 1, Article VII, 1987 Constitution.

[16] Cruz, *Philippine Political Law*, p. 173 [1996].

[17] Tanada and Carreon, *Political Law of the Philippines*, vol. 1, p. 275 [1961].

[18] Section 17, Article VII of the 1987 Constitution provides:

"Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed."

[19] *Pelaez v. Auditor General*, 15 SCRA 569, 583 [1965].

[20] Sinco, *Philippine Political Law*, pp. 234-235 [1962].

[21] *Id.*, at 234.

[22] *Id.*, at 235.

[23] Section 3, Chapter 2, Title I, Book III, Administrative Code of 1987.

[24] Cruz, *Philippine Administrative Law*, p. 18 (1991).

[25] Third Whereas Clause, Administrative Code of 1987.

[26] Fourth Whereas Clause, Administrative Code of 1987.

[27] See Cortes, Philippine Administrative Law, pp. 2-5 [1984].

[28] Fisher, Constitutional Conflicts Between Congress and the President, 4th ed., pp. 106-107.

[29] Cooley on Torts, Sec. 135, vol. 1, 4th ed., [1932]; see also Warren and Brandeis, "The Right to Privacy," 4 Harvard Law Review 193-220 [1890] - this article greatly influenced the enactment of privacy statutes in the United States (Cortes, I., The Constitutional Foundations of Privacy, p. 15 [1970]).

[30] 381 U.S. 479, 14 L. ed. 2d 510 [1965].

[31] AMENDMENT I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT III [1791]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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AMENDMENT IX [1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[32] 22 SCRA 424, 444-445.

[33] Morfe v. Mutuc, 22 SCRA 424, 444 [1968]; Cortes, The Constitutional Foundations of Privacy, p. 18 [1970].

[34] Cortes, The Constitutional Foundations of Privacy, p. 18 [1970].

[35] Article 26 of the Civil Code provides:

"Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief.

- (1) Prying into the privacy of another's residence;
- (2) Meddling with or disturbing the private life or family relations of another;
- (3) Intriguing to cause another to be alienated from his friends;
- (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition."

[36] Article 32, Civil Code.

[37] Article 723, Civil Code.

[38] Article 229, Revised Penal Code.

[39] Articles 290-292, Revised Penal Code.

- [40] Article 280, Revised Penal Code.
- [41] R.A. 4200.
- [42] R.A. 1405.
- [43] R.A. 8293.
- [44] Section 24, Rule 130 [C], Revised Rules on Evidence.
- [45] "Biometry," Dorland's Illustrated Medical Dictionary, 24th ed. [1965]. "Biometry" or "biometrics" is literally, the measurement of living things; but it is generally used to mean the application of mathematics to biology. The term is now largely obsolete as a biological science since mathematical or statistical work is an integral part of most biological disciplines (The Dictionary of Science [1993]).
- [46] "Biometric Identification," <http://www.afmc.wpafb.af.mil/organizations/HQ-AFMC/LG/LSO/LOA/bio.html>; see also "Biometrics Explained- Section-1," <http://www.ncsa.com/services/consortia/cbdc/sec1.html>.
- [47] *Id.*
- [48] *Id.*
- [49] Or in microchips of smart cards and magnetic strips of bank cards.
- [50] "Privacy at Risk, Finger-scanning for Ideology and Profit" [1998], <file:///D:/commentary.html>
- [51] "Biometric Identification," <http://www.afmc.wpafb.af.mil/organizations/HQ-AFMC/LG/LSO/LOA/bio.html>
- [52] "The Libertarian Library: Facing Up to Biometrics," The Mouse Monitor, The International Journal of Bureau-Rat Control [1998], <http://www.cyberhaven.com/libertarian/biomet.html>.
- [53] *Id.* The thermogram is so accurate that it can tell identical twins apart and cannot be fooled by cosmetic surgery or disguises, including facial hair.
- [54] "An updated national population register will provide a suitable base for all types of planning and programming of government facilities and services" (Memorandum of the Solicitor General, p. 20, Rollo, p. 210).
- [55] Simitis, "Reviewing Privacy in an Information Society," University of Pennsylvania Law Review, vol. 135: 707, 717 [March 1985].
- [56] Sloan, I. Law of Privacy Rights in a Technological Society, p. 6 [1986].
- [57] Respondent GSIS, through counsel, claims that the basic information shall be limited to the individual's full name, place of birth, date of birth, photograph, signature and thumbmark (Comment of Respondent GSIS, p. 6, Rollo, p. 101).
- [58] Otani, K. "Information Security in the Network Age," 70 Philippine Law Journal, 1, 9 [1995].
- [59] Cortes, I., The Constitutional Foundations of Privacy, p. 12 (1970).
- [60] Simitis, "Reviewing Privacy in an Information Society," University of Pennsylvania Law Review, vol. 135: 707, 740 [March 1987].
- [61] *Ibid.*, p. 718.
- [62] The right to control the collection, maintenance, use, and dissemination of data about oneself is called "informational privacy" (Hancock, G., "California's Privacy Act: Controlling Government's Use of Information? 32 Stanford Law Review no. 5, p. 1001 [May 1980]. The right to make personal decisions or conduct personal activities without intrusion, observation or interference is called "autonomy privacy" (Hill v. NCAA, 865 P. 2d 633, 652-654 [Cal. 1994]).
- [63] Hosch, "The Interest in Limiting the Disclosure of Personal Information: A Constitutional Analysis," Vanderbilt Law Review vol. 36: 139, 142 [Jan. 1983].
- [64] Miller, "Personal Privacy in the Computer Age, The Challenge of a New Technology in an Information-Oriented Society," 67 Michigan Law Review 1091, 1119 [1969]; see also Cortes, *supra*, at 13.
- [65] Cortes, I. The Constitutional Foundation of Privacy, p.12 [1970].

[66] *Id.*

[67] *Rakas v. Illinois*, 439 U.S. 128, 143-144 [1978]; see the decision and Justice Harlan's concurring opinion in *Katz v. United States*, 389 U.S. 347, 353, 361, 19 L. ed. 2d 576, 583, 587-589 [1967]; see also Southard, "Individual Privacy and Governmental Efficiency: Technology's Effect on the Government's Ability to Gather, Store, and Distribute Information" (Computer/Law Journal, vol. IX, pp. 359, 367, note 63 [1989]).

[68] Kennedy, "Note: Emasculating a State's Constitutional Right to Privacy: The California Supreme Court's Decision in *Hill v. NCAA*," *Temple Law Review*, vol. 68: 1497, 1517 [1995].

[69] *Id.*

[70] Southard, *supra*, at 369.

[71] *Id.*; see also Laurence H. Tribe, "The Constitution in Cyberspace: Law and Liberty Beyond the Electronic Frontier," Keynote Address at the First Conference on Computers, Freedom and Privacy, at Jim Warren & Computer Professionals for Social Responsibility [1991].

[72] As one author has observed, previously, one could take steps to ensure an expectation of privacy in a private place, e.g., locking of doors and closing of curtains. Because advances in surveillance technology have made these precautions meaningless, the expectation of the privacy they offer is no longer justifiable and reasonable-- Southard, *supra*, at 369.

[73] Section 4, Commonwealth Act No. 591 [1940].

[74] Sections 24 [c] and 28 [e], R.A. 1161, as amended.

[75] Citing *Morfe v. Mutuc*, 22 SCRA 424, 445 [1968].

[76] Comment of the Solicitor General, p. 16, Rollo, p. 75.

[77] *Op. cit.*, note 76.

[78] *Id.*, at 435.

[79] 429 U.S. 589, 51 L. ed. 2d 64 [1977].

[80] Some of the patients were children whose parents feared would be stigmatized by the State's central filing system.

[81] Sloan, *Law of Privacy Rights in a Technological Society*, p. 4 [1986].

[82] Southard, "Individual Privacy and Governmental Efficiency: Technology's Effect on the Government's Ability to Gather, Store, and Distribute Information," IX *Computer/Law Journal* 359, 360 [1989].

[83] The Internet is a decentralized network interconnected by the TCP/IP protocol. The Net was started as a military network ARPANET in 1969 by the US Department of Defense for the purpose of networking main frame computers to prepare against missile weapons. It opened to public research organizations and universities in 1983 and has been interconnected with commercial networks since 1990 (Kazuko Otani, "Information Security in the Network Age," *Philippine Law Journal*, vol. 70: 1, 2 [1995]).

[84] Cyberspace is a place located in no particular geographical location but available to anyone, anywhere in the world, with access to the internet (Darrel Menhe, "Jurisdiction in Cyberspace: A Theory of International Spaces 4 *Mich. Tel. Tech. L. Rev.* 3 (April 23, 1998), <<http://www.law.umich.edu/mttlr/volfour/menthe.html>>).

[85] Southard, *supra*, at 361-362

[86] *Id.*; *White v. Davis*, 533 P. 2d 222 [Cal. 1975]; *City of Sta. Barbara v. Adamson*, 610 P. 2d 436 [Cal. 1980]. In his concurring opinion in *Whalen v. Roe*, Justice Brennan stated that a statute that deprives an individual of his privacy is not unconstitutional only if it was necessary to promote a compelling state interest (429 U.S. 589, 606-607, 51 L. ed. 2d 64, 77- 78).

[87] *Morfe v. Mutuc*, *supra*, at 444-445 citing Emerson, "Nine Justices in Search of a Doctrine," 64 *Michigan Law Review* 219, 229 [1965].

[88] See Shils, "Privacy: Its Constitution and Vicissitudes," *Law and Contemporary Problems*, vol. 31, pp. 301-303 [1966].

[89] Harry Kalvin, Jr., "The Problems of Privacy in the Year 2000," *Daedalus*, vol. 96, pp. 876-879 [1967].